USA

THE EDGE OF ENDURANCE

PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

AMNESTY INTERNATIONAL

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1. INTRODUCTION AND OVERVIEW

More than 3,000 prisoners in California are held in high security isolation units known as Security Housing Units (SHUs), where they are confined for at least 22 and a half hours a day in single or double cells, with no work or meaningful rehabilitation programs or group activities of any kind. Over 1,000 are held in the SHU at Pelican Bay State Prison, a remote facility where most prisoners are confined alone in cells which have no windows to the outside or direct access to natural light. SHU prisoners are isolated both within prison and from meaningful contacts with the outside world: contact with correctional staff is kept to a minimum, and consultations with medical, mental health and other staff routinely take place behind barriers; all visits, including family and legal visits, are also non-contact, with prisoners separated from their visitors behind a glass screen.

Under California regulations, the SHU is intended for prisoners whose conduct endangers the safety of others or the security of the institution. Around a third of the current population are serving fixed SHU terms of SHU confinement (ranging from a few months to several years) after being found guilty through the internal disciplinary system of specific offences while in custody. However, more than 2,000 prisoners are serving "indeterminate" (indefinite) SHU terms because they have been "validated" by the prison authorities as members or associates of prison gangs. According to figures provided by the California Department of Corrections and Rehabilitation (CDCR) in 2011, more than 500 prisoners serving indeterminate SHU terms had spent ten or more years in the Pelican Bay SHU; of this number, more than 200 had spent over 15 years in the SHU and 78 more than 20 years. Many had been in the SHU since it opened in 1989, held in conditions of extreme isolation and environmental deprivation.

No other US state is believed to have held so many prisoners for such long periods in indefinite isolation. The main route out of the SHU for prisoners with alleged gang connections has been to "debrief", a process requiring them to provide information on other gang members which many decline to undertake because of the threat of retaliation. Although prisoners may also be released from the SHU if they have been "inactive" as a gang member or associate for six years, many prisoners have been held long beyond this period. Until now, these prisoners have had no means of leaving the SHU through their own positive behaviour or through participating in programs. Many prisoners have spent decades in isolation despite reportedly being free of any serious rule violations and - if they are serving a "term to life" sentence – without any means of earning parole. Prisoner advocates and others have criticized the gang validation process as unreliable and lacking adequate safeguards, allowing prisoners to be consigned to indefinite isolation without evidence of any specific illegal activity, or on the basis of tenuous gang associations, on evidence often provided by anonymous informants.

In March 2012, the CDCR put forward proposals which, for the first time, would provide a "step-down program" (SDP) for prisoners serving indeterminate SHU terms, using what the department has called a "behaviour-based model" to enable them to earn their way back to the general prison population. Amnesty International welcomes in principle plans to provide a route out of isolation through prisoners' own behaviour. However, the SDP – which would take place in four stages, each lasting a minimum of one-year – does not allow any group interaction for at least the first two years. No changes to the physical conditions of confinement are proposed for the Pelican Bay SHU, where prisoners would spend at least two years in the same isolated conditions of cellular confinement as they are now. Prisoners could still be held in indefinite isolation if they fail to meet the criteria for the SDP. In continuing to confine prisoners in prolonged isolation – albeit with shorter minimum terms than under the present system – California would still fall short of international law and standards for humane treatment and the prohibition of torture and other ill-treatment.

Amnesty International does not seek to minimize the challenges faced by prison administrators in dealing with prison gangs and individuals who are a threat to institutional security and recognizes that it may sometimes be necessary to segregate prisoners for disciplinary or security purposes. However, all measures must be consistent with states' obligation under international law and standards to treat all prisoners humanely. In recognition of the negative effects of such treatment, international and regional human rights bodies and experts have called on states to limit their use of solitary confinement, so that it is imposed only in exceptional circumstances for as short a period as possible. As described below, Amnesty International considers that the conditions of isolation and other deprivations imposed on prisoners in California's SHU units breach international standards on humane treatment. The cumulative effects of such conditions, particularly when imposed for prolonged or indefinite periods, and the severe environmental deprivation in Pelican Bay SHU, in particular, amounts to cruel, inhuman or degrading treatment, in violation of international law.

Amnesty International's recommendations to the California authorities, developed in more detail at the end of the report, include:

- Limiting the use of isolation in a SHU or similar environment so that is it imposed only as a last resort in the case of prisoners whose behaviour constitutes a severe and ongoing threat to the safety of others or the security of the institution.
- Improving conditions for all prisoners held in SHUs, including better exercise provision and an opportunity for more human contact for prisoners, even at the most restrictive custody levels.
- Allowing SHU prisoners to make regular phone calls to their families.
- Reducing the length of the Step down Program and providing meaningful access to programs where prisoners have an opportunity for some group contact and interaction with others at an earlier stage.

Immediate removal from isolation of prisoners who have already spent years in the SHU under an indeterminate assignment.

In making these recommendations, Amnesty International is aware that CDCR has faced a number of challenges in recent years, including cuts to its budget for rehabilitation programs. However, as its own figures show, the SHUs cost significantly more to run than general prison population facilities, despite providing the barest minimum amenities for those confined in them. As some other states have shown, cutting down on "supermax" confinement has released resources for alternative strategies to improve prisoner behaviour, including gang diversion programs.

Table 1: Pelican Bay Annual housing costs 2010-2011 as provided by the California Department of Corrections and Rehabilitation at http://www.cdcr.ca.gov/COMIO/Uploadfile/pdfs/Pelican_Bay.pdf

	Security Housing Unit (SHU)	General Population (GP)	Administrative Segregation Unit (ASU)	Psychiatric Services Unit (PSU)
Inmate Population	1, 111 inmates	1, 271 inmates	403 inmates	116 inmates
Annual housing costs	$70, 641 per SHU inmate	$58, 324 per GP inmate	$77, 740 per ASU inmate	$171, 857 per PSU inmate

Amnesty International recognizes that the responsibility for implementing humane and effective prison programs does not lie solely with the prison department but also with the state legislature and other branches of government. The organization urges these bodies to ensure that CDCR is able to fulfil its obligations by providing adequate funding for programs that will ultimately enhance

public safety as well as humane treatment for those incarcerated.

SCOPE OF THE REPORT

In November 2011, an Amnesty International delegation toured the SHU units at Pelican Bay State Prison, the California State Prison at Corcoran and Valley State Prison for Women. During the tours, the delegates were able to speak with a number of prisoners as well as with prison staff. [1] This report includes findings from these tours as well as information from sources including CDCR, prisoners, prisoner advocates and human rights groups in California. It contains the organization's comments and observations on the new reform proposals and makes recommendations, with reference to international and US standards. Amnesty International welcomes the openness of CDCR in granting its request to visit the facilities. The organization notes that the department has been in dialogue with a range of stakeholders and others in preparing its reform proposals, including the "mediation team" of advocates who liaised with prisoners during the recent hunger strike (see below). It hopes that CDCR will consider the recommendations in this report along with those of other parties.

Amnesty International's report focuses mainly on conditions in the SHUs at Pelican Bay and Corcoran, the two facilities which house most of the state's SHU population which is overwhelmingly male. Fifty-eight women were housed in the Valley State Prison SHU at the time of Amnesty International's visit. However, the unit has since closed and female SHU prisoners transferred to the California Institution to Women. Only a few women in California are serving indeterminate SHU terms for alleged gang associations; most are reportedly serving fixed terms for disciplinary infractions. Apart from some specific gender-based issues relating to the role of male staff and privacy in women's security housing, its recommendations on conditions apply to all SHU prisoners.

Following Amnesty International's visit, the organization sought information from CDCR on the demographics of SHU prisoners, including race, age and committal offence, which the department had indicated it would provide. The organization is disappointed that this and other information requested following its visit had not been made available at the time of writing. However, a study looking at the race of prisoners paroled from CDCR in 2007 who had previously served SHU terms showed that 55% were Hispanic, more than their proportion of the overall parole population that year (42%); 25.8% were White, slightly under their proportion of the parole population (29.4), while 15.9% were Black, less than their proportion (23.5%) of parolees in general. [2] This indicates that the racial/ethnic composition of prisoners in the SHU units generally reflects the racial make-up of prison gangs, although not all gang members or associates are reportedly leaders or play a major role in gang activity. [3]

With regard to age, the minimum age for entry into the adult prison system is 18. According to CDCR statistics, 13.5% of the adult institutional population in December 2009 was aged between 18 and 24, with 30% aged between 18 and 30. 15.5% were aged 50 and over, with the mean age being 37. Out of nine prisoners Amnesty International interviewed in the SHU, two were under 20 when they entered the SHU.

2. BACKGROUND

California is one of more than 40 US states to house prisoners in high security isolation facilities, often termed "super-maximum security" prisons. Although no exact data is available, as many as 25,000 prisoners are estimated to be held in such facilities, with thousands more held in solitary confinement for varying periods in disciplinary or administrative segregation cells at any given time.[4] While prison authorities have always been able to segregate prisoners for their own protection or as a penalty for disciplinary offences, super-maximum security facilities differ in that they are designed to remove large numbers of prisoners from the general prison population and confine them long-term to isolation cells as an administrative control measure. States started building such prisons (or units within prisons) from the late 1980s, with the largest expansion during the 1990s.[5]

Early research on the extent of super-maximum security custody in the USA in the 1990s had California with the highest number of places. Although accounting for almost 15% of the total of such beds, California nevertheless came close to the state average for the proportion of prisoners in such conditions – 1.9% as against the average of 1.8% - because its total prison population was so large.[6] This contrasted markedly with, for example, the United Kingdom which then held about 50 or 0.1% of its 45,000 prisoners in its highest and most restrictive form of custody for control purposes in Close Supervision Centres.

The growth of super-maximum security facilities has been linked to the huge rise in the numbers of people incarcerated in the USA from the late 1970s onwards, together with a shift away from rehabilitation as a goal of imprisonment to more emphasis on punishment and control. Between 1980 and 2009 the US prison population quadrupled to reach more than two million, an increase largely driven by heavier penalties resulting in more people serving longer sentences than ever before. As prison building costs escalated, many states cut funding for rehabilitation, education and other programs. With prisoners held in overcrowded conditions, many of them young and under-educated and with little to occupy themselves, incidents of violence and disorder increased.

The rationale given by the authorities for building super-maximum facilities was that isolating the most dangerous or disruptive prisoners would make the rest of the prison population safer. Although super-maximum prisons undoubtedly house some highly dangerous offenders, it has been shown that not all prisoners fit this category; many prisoners who end up in such units have mental illness or behavioural problems and have sometimes been confined for repeated, relatively minor rule infractions and disruptive behaviour. While prisoners are usually placed in such facilities as an "administrative" measure, the conditions – as seen in California and elsewhere – are often highly punitive in effect, with prisoners confined alone to small cells with few possessions or amenities and no access to work, vocational or other programs. As described below, the rationale for such facilities has been increasingly challenged, on grounds of the negative effects of such confinement on prisoners' mental and physical health, as well as on grounds of their cost and effectiveness as a management tool.

California was at the forefront of moves to toughen penalties, and its prison population escalated during the 1980s and 1990s following the introduction of some of the nation's harshest sentencing laws.[7] Once a leader in the philosophy of rehabilitation, California also passed legislation which expressly described punishment rather than rehabilitation as the central aim of imprisonment.[8] Pelican Bay SHU, which opened in 1989, was one of the first super-maximum security facilities specifically designed to be "non-programming", that is, constructed with no communal space for recreation, education or any other group activity.[9] California State Prison at Corcoran opened a year earlier in 1988, retrofitted to include several SHU units, currently with a SHU population of over 1,300. Since then, California has also built a SHU unit at the California Correctional Institution at Tehachapi (housing some 840 prisoners in 2011) and a smaller unit at California State Prison, Sacramento. The above are all facilities for males. A smaller SHU unit at Valley State Prison for Women was recently transferred to the California Institute for Women. Although the percentage of prisoners in California's SHUs – just over 2% - remains not much greater than the reported US

average in "super-maximum" custody, the sheer numbers (more than 3,000) are higher than in most states as is the length of time many prisoners have been housed in such units. There are also thousands of prisoners held for shorter periods in isolation in administrative segregation units throughout the state.

The California authorities have said that the SHUs were created in response to the serious violence and threats to security largely caused by prison gangs. They have pointed to a dramatic drop in the number of prison homicides after Pelican Bay and Corcoran SHUs were opened. However, there is some dispute about how far the use of super-max units has led to a fall in violence, in California or elsewhere.[10] One study has shown that, while violence in California's prisons reached a peak in the mid 1980s and declined thereafter, assault rates started to rise again from the mid 1990s onwards, and that homicides remained higher than the average in both Pelican Bay and Corcoran prisons.[11] In testimony at a hearing to a state legislative committee in August 2011, CDCR spokesperson Scott Kernan said he believed the violence would have been even higher had they not had the SHUs. However, many penal experts have argued that, even if SHUs have some incapacitating effect, violence and disruption can be better controlled by alternative measures, such as more effective prison management, increased vigilance over contraband and weapons, and programs to divert prisoners from gang-related activities.

Prison reform experts have also pointed out that, even where it is necessary to segregate some prisoners, they should not be cut off from rehabilitation programs. Most prisoners, even those in SHU confinement, will eventually be released. As described below, the damaging effects of prolonged isolation and confinement to a cell may persist long after prisoners are released back to the community. Prison reformers have argued that the high cost of super-maximum confinement should be seen not only in financial terms but also in terms of the risk to public safety of warehousing prisoners in stark conditions, with little human interaction or access to meaningful programs.

In recent years, a number of US states have started to rethink their use of super-maximum confinement. There has also been renewed recognition among penal experts and administrators of the value of rehabilitation programs for prisoners and parolees in general. In July 2005 in California, the former Department of Corrections "changed its name and mission to address the rehabilitation and re-entry needs of incarcerated females and males" and set up more programs aimed at reducing recidivism. While reforms to supermax housing have often been driven by litigation and/or the need to cut costs, several states have reported positive outcomes in terms of improved prisoner behaviour and reductions in violence after they reduced their use of isolation and introduced better conditions for high risk prisoners.[12]

CALIFORNIA SHU REFORM PROPOSALS AND REALIGNMENT

In California, CDCR has proposed reforms which it says will ultimately reduce the numbers in the SHU by changing the criteria for assigning alleged gang members or associates to the SHU and providing access to a step-down program. These proposals have been made in the context of wider moves to reduce the state's prison population. In August 2009, a three-judge panel ordered California to reduce overcrowding in its 33 prisons to 137.5% of its design capacity, after finding that overcrowding was the "primary reason" the state had been unable to deliver adequate medical and mental health care to its inmate population. The order was upheld by the US Supreme Court in May 2011.[13] The state has since enacted several bills to move low level offenders from state authority to the counties (local authorities) under a process known as "realignment". Under this process, less serious offenders will now serve their sentences in local jails instead of state prisons and most people on parole will be supervised at county rather than state level. By June 2012, the state prison population had fallen to some 136,000 inmates - down from a peak of 173,000 in 2006 - with further reductions anticipated for the future.[14]

CDCR has said that "realignment" and the resulting reduction in overcrowding provided the opportunity to revise its SHU policies, as well as to focus on providing more effective rehabilitation programs for the inmate population in general. However, a number of challenges remain. Although it has achieved significant reductions to its prison population, California still has more prisoners than any other US state apart from Texas and more than most other countries.[15] The department

has already experienced substantial reductions in its budget and staffing in recent years, despite reportedly having one of the lowest ratios of staff to inmates of any state. While further cuts are intended to reflect reductions in the numbers of prisoners, there is concern that they may not leave sufficient funds to provide adequate programs for the remaining population. This concern was reflected in a February 2012 report by the Legislative Analyst on the budgetary implications of realignment, which states that CDCR "is not currently delivering rehabilitation programs for inmates and parolees as effectively as possible".[16] The report recommended that the Legislature not approve a proposed further reduction of $101 million to rehabilitation programs until CDCR had presented a plan on how it will implement effective programming under realignment.

As described in this report, Amnesty International does not believe that the current proposals to reform SHU policies and provide a step-down program for prisoners in isolation go far enough to bring the system into compliance with the USA's obligations for the humane treatment of prisoners. Amnesty International urges the legislature and CDCR to ensure that sufficient resources are available to provide meaningful programs to all prisoners.

THE 2011 HUNGER STRIKE

"During the hunger strike he was taken to a Pelican Bay Administrative Segregation Unit (ASU) with eleven other hunger strike leaders. He was in ASU with no warm clothes, bed blankets, possessions (including writing materials). The air conditioning was turned right up while he had just a t-shirt and trousers."

Wife of gang validated SHU prisoner, one of the hunger striker leaders - this information was corroborated by one of the lead hunger strikers with whom the Amnesty International delegation spoke

On 1 July 2011, prisoners in the SHU initiated a hunger strike to protest against their conditions of confinement, bringing the issue into the public spotlight.[17] The strike spread to prisons across the state, with more than 6,000 prisoners participating at one point. The hunger strikers' demands for improved conditions in the SHUs give an indication of just how stark those conditions were: they included requests for access to personal items such as being able to purchase wall calendars, "watch caps" (outdoor headwear when exercising in bad weather), "sweat pants" (to keep warm) and at least some basic in-cell art materials. They also asked to be able to have an annual photograph taken to send to their families (a common practice allowed to most prisoners).

The strike ended on 20 July after CDCR agreed to make some modest changes immediately (allowing prisoners to have "watch caps", wall calendars and some other personal items), and said it was undertaking a policy review to address the wider demands. One of the hunger strikers' "core demands" was that California comply with the US Commission on Safety and Abuse in Americas Prisons 2006 recommendation to end long term solitary confinement and make segregation a last resort. The strikers also called for prisoners who had served ten or more years of indefinite SHU confinement to be released to the general prison population. Other demands included better food (following repeated complaints that the food provided to SHU prisoners was often cold and lacking nutrition) and requests that SHU inmates with chronic health problems be moved to the New Folsom Medical SHU facility.

Following concern among prisoners about what they perceived as a lack of progress in implementing changes, the hunger strike resumed briefly in late September 2011, but was called off after meetings between prisoner representatives and CDCR and further assurances that CDCR would institute changes. While no disciplinary action had been taken against the first hunger strikers, the second hunger strike was treated by CDCR as a major rule violation and some prisoners were punished by having their property and canteen privileges confiscated. Fifteen of the strike leaders were reportedly moved to harsh conditions in administrative segregation cells for a short period. Amnesty International wrote to CDCR at the time, urging it to take action to end to the hunger strike by providing assurances on improvements both to conditions and the procedures by which prisoners are assigned to the SHU, rather than through disciplinary action resulting in still harsher conditions. [18]

3. INTERNATIONAL LAW AND STANDARDS ON THE TREATMENT OF PRISONERS AND USE OF SOLITARY CONFINEMENT

The USA has ratified the United Nations (UN) Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR) both of which affirm the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law (articles 1 and 16 of the Convention against Torture and article 7 of the ICCPR). Additionally, the ICCPR, in Article 10, requires that "all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person".

The UN Human Rights Committee, the body which monitors states' compliance with their obligations under the ICCPR, has stated that humane treatment of those deprived of their liberty is a "fundamental and universally applicable rule" which imposes a positive obligation on states towards those who are deprived of their liberty and which complements the prohibition on torture or other cruel, inhuman or degrading treatment or punishment. International standards also provide that prisoners should not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty or restrictions that are unavoidable in a closed environment.[19] States are obliged to provide prisoners with services to meet their essential needs. These essential needs include adequate food and water, washing and sanitary facilities, bedding and clothing, health care, access to natural light, physical exercise, facilities to allow religious practice, and communication with others. In this regard the Human Rights Committee has, in its General Comment on Article 10 and frequently when commenting on states parties' reports, cited the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners (SMR); although not as such having the legally binding force of a treaty, the SMR set out minimum standards which the UN Special Rapporteur on Torture has said are "widely accepted as the universal norm for the humane treatment of prisoners".[20]

Key standards for the treatment of prisoners are also set out in the Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly in 1990, which reiterates that all prisoners should be treated with the respect due to their inherent dignity and value as human beings (Principle 1) and, among other things underlines that eexcept for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain all their human rights (Principle 5); specifically they state that all prisoners must have the right to take part in cultural activities and education aimed at the development of the human personality (Principle 6), and they must have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

The Human Rights Committee has emphasized that the prohibition of torture and other cruel, inhuman or degrading treatment under international law "relates not only to acts that cause physical pain but also to acts that cause mental suffering" and has stated, specifically, that prolonged solitary confinement may breach this prohibition .[21]

The Human Rights Committee and the Committee against Torture (CAT) (the monitoring body of

the Convention against Torture) have criticized the harsh conditions of isolation in some US "super-maximum" facilities as inconsistent with the USA's obligations under the above treaties. In 2006, the Human Rights Committee reiterated its concern that "conditions in some maximum security prisons are incompatible with the obligation contained in article 10(1) to treat detained persons humanely", citing, in particular, prolonged cellular confinement, lack of adequate exercise and the "depersonalized environment" found in such units.[22] The Committee also observed that such conditions "cannot be reconciled with the requirement in Article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners".[23] The CAT has urged the USA to review "the regime imposed on detainees in supermaximum prisons, in particular the practice of prolonged isolation", noting the effect of such treatment on prisoners' mental health.[24]

International and regional human rights and other bodies have long expressed concern about the use of solitary confinement in prisons because of the physical and mental harm and suffering this may cause. The Basic Principles for the Treatment of Prisoners, states under Principle 7 that efforts to abolish solitary confinement as a punishment, or restrict its use, should be undertaken and encouraged. The European Prison Rules, adopted by the Council of Europe in 2006, state that solitary confinement should be imposed as a punishment "only in exceptional cases and for a specified period of time that shall be as short as possible".[25] The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted at the International Psychological Trauma Symposium in December 2007, recommends clear limits on the use of solitary confinement in the criminal justice system, given the serious psychological and other consequences of such treatment. The jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights has also has in a number of cases found solitary confinement to breach the prohibition of torture and other ill-treatment and the obligation of humane treatment under the respective regional human rights conventions.[26]

In August 2011, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment issued a detailed report reviewing the practice of solitary confinement, which he defined as "the physical and social isolation of individuals who are confined to cells for 22-24 hours a day".[27] The report cited the findings of regional and international human rights bodies and experts, and reviewed studies showing the severe negative effects isolation can have on prisoners' physical and mental health, even when imposed for limited periods.

The Special Rapporteur stressed that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects, and contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. He noted that reduced social stimulus resulting from solitary confinement, even over a short period, can have detrimental effects on an individual's mental health, and that this effect is exacerbated when individuals in solitary confinement are supervised with almost no human interaction. He stated that, depending on the conditions, length, effects and other circumstances, it can amount to torture or cruel, inhuman or degrading treatment or punishment. He urged states to abolish its use for juveniles and persons with mental disabilities and for prolonged or indefinite periods. He stressed that it should be used only exceptionally, as a last resort, and for as short a time as possible, with procedural safeguards including that those subjected to it must have a genuine opportunity to challenge the confinement and its underlying justification through a process of administrative review and through the courts. Throughout there should also be a documented system of regular monitoring and review of prisoners' mental and physical condition by qualified independent medical personnel accountable to an authority outside the prison administration; any deterioration of the inmate's mental or physical condition should trigger a presumption that the conditions of confinement are excessive and activate an immediate review.

4. US LAW AND STANDARDS

The US Supreme Court has not ruled that solitary confinement, even when imposed indefinitely, is *per se* a violation of the US Constitution. However, there is a growing consensus among the US courts that housing mentally ill prisoners in "super-maximum security" isolation units is incompatible with the Eighth Amendment prohibition of "cruel and unusual punishment" under the US Constitution. One of the landmark rulings was *Madrid v Gomez (*1995*),* which ordered the removal of seriously mentally ill prisoners from the Pelican Bay SHU on the ground that conditions put them at high risk of suffering "very severe injury to their mental health".[28] However, the court stopped short of ruling that conditions for all prisoners at Pelican Bay SHU were unconstitutional (although, as discussed below, there is some evidence that neither the *Madrid* court nor the designers of the unit had envisaged such long term confinement there).

Judge Henderson, in delivering the *Madrid* ruling, noted that, "the record demonstrates that the conditions of extreme social isolation and reduced environmental stimulation found in the Pelican Bay SHU will likely inflict some degree of psychological trauma upon most inmates confined there for more than brief periods". However, he held that, "while the conditions in the SHU may press the outer bounds of what most humans can psychologically tolerate, the record does not satisfactorily demonstrate that there is a sufficiently high risk to all inmates of incurring a serious mental illness from exposure to conditions in the SHU to find that the conditions constitute *per se* deprivation of a basic necessity of life".[29]

The court noted in its ruling that the California authorities had a legitimate penological interest in restricting the social activity of certain inmates. While Judge Henderson observed that some aspects of the SHU – such as windowless cells, lack of any view or equipment in the exercise yards – appeared to have tenuous links with what was necessary on security grounds, the court deferred to the considerable discretion afforded states by the federal courts to determine the specific conditions of confinement. Thus, the ruling left unchanged the physical conditions in the SHU.

While the impact of many years of indefinite SHU confinement in the conditions at Pelican Bay might persuade a court today to reach a different decision, the ruling reflects the very high threshold set by the US courts in deciding claims of cruel prison conditions. The US Supreme Court has held that for conditions to amount to "cruel and unusual punishment" they must be so severe as to deprive the inmate of a "basic necessity of life".[30] This has been interpreted to include the physical requirements of food, clothing, shelter, medical care and personal safety.[31] However, the courts have been less willing to consider psychological pain or deterioration in a prisoner's mental state as sufficient to judge conditions unconstitutional, except in very severe cases.[32]

Since *Madrid*, other US courts have held that housing seriously mentally ill prisoners in "supermax" conditions is unconstitutional. However, Amnesty International believes that insufficient attention has been paid by the US courts – or by legislators and prison administrators – to the mental pain and suffering endured by all prisoners, whether or not they are assessed as suffering from serious mental illness, who are subjected to prolonged isolation and environmental and other deprivations.

The USA has sought to limit the application of international human rights law in its conduct by entering reservations to article 7 of the ICCPR and article 16 of the Convention against Torture as a condition of ratifying the treaties. The reservations state that the US considers itself bound by the articles only to the extent that "cruel, inhuman or degrading treatment or punishment" means the "cruel and unusual treatment or punishment" prohibited under the US Constitution. In its initial report to the Human Rights Committee on its obligations under the ICCPR, the US administration, then under President Bill Clinton, explained its reservations by stating that certain US practices had withstood judicial review in the US courts under constitutional provisions which were arguably narrower than the scope of Article 7. The report cited, as an example, prolonged judicial proceedings in cases involving capital punishment, which the Committee had suggested could

constitute cruel, inhuman or degrading treatment or punishment in contravention of Article 7, and it noted that "the Committee has also indicated that the prohibition may extend to other practices as corporal punishment and solitary confinement." [33]

Amnesty International has repeatedly called on the USA to withdraw its reservations as defeating the object and purpose of the treaties in question and therefore incompatible with international law.[34] The Human Rights Committee has also noted with concern the restrictive interpretation made by the US of its obligations under the Covenant, as has the Committee against Torture.[35] In any event, the USA has made no similar reservation to Article 10 of the ICCPR which requires that all prisoners must be treated humanely, without exception. Given the clear consensus among international human rights bodies and experts that prolonged or indefinite solitary confinement is inhumane treatment, Amnesty International is concerned that US courts and governments continue to accept such practice.

While the US courts have taken a relatively narrow view of what are unconstitutional prison conditions – largely deferring to prison administrations on measures deemed necessary on security grounds – other US bodies have been more robust in expressing concern about the use of solitary confinement.

In its 2006 report *Confronting Confinement*, the Commission on Safety and Abuse in America's Prisons (a broad based panel co-chaired by a former US Attorney General and a former Chief Judge) called for an end to conditions of isolation in US prisons.[36] The report acknowledged that "Separating dangerous or vulnerable individuals from the general prison population is part of running a safe correctional facility". However, it found that in some systems, the "drive for safety, coupled with public demand for tough punishment has had perverse effects", with prisoners who were justifiably separated from the general population locked in cells with little opportunity to be productive or to prepare for release and others who were not a serious threat confined under the same conditions. The report noted that in some places "the environment in segregation is so severe that people end up completely isolated, living in what can only be described as torturous conditions".[37]

The Commission recommended making segregation a last resort, for as brief a period as possible, with tighter admissions criteria and segregated prisoners given an opportunity to engage in productive activities. Noting higher recidivism rates among prisoners released directly from segregation, the Commission also recommended that inmates should spend time in a normal prison setting before being released to the community. The Commission called on US jurisdictions to "End conditions of isolation" and "Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm", citing as examples systems where prisoners are held in cells with few possessions and no natural light or view outside the cell and no contact with other prisoners or meaningful contact with staff.[38]

In 2010, the American Bar Association (ABA) promulgated standards on the treatment of prisoners which included standards on segregation.[39] These state that segregated housing "should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner" (Standard 23-2.6). The standards state that segregation for more than one year should be imposed only if the prisoner poses a "continuing serious threat" (23-2.7); that "Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population" (23-3.8 (b)); and that all prisoners in segregated housing should be provided with "meaningful forms of mental, physical and social stimulation", including, where possible, more out-of-cell time and opportunities to exercise in the presence of other prisoners (23-3.8 (c)). The standards also recommend a number of procedural protections for prisoners placed in segregated housing, including a hearing at which the prisoner has a reasonable opportunity to present witnesses and information and to participate in the proceedings, with regular, meaningful review (23-2.9).

5. CONDITIONS IN PELICAN BAY SHU

"You lay there in your concrete tomb trying to block out the cold especially in the winter when this place is like a morgue. The wall I lay next to is an exterior wall... it's like sleeping next to a block of ice... sometimes the floor is warmer and there I will sleep".

Letter written by an inmate who has been held in the Pelican Bay SHU for 16 years as a gang associate

The Pelican Bay SHU is a separate facility within Pelican Bay State Prison maximum security complex in Crescent City, situated in the far north of California close to the border with Oregon. At the time of Amnesty International's visit to the prison in November 2011, around 1,100 prisoners were held in the SHU, slightly above the official capacity of 1056. According to CDCR, 98% of prisoners in PBSP SHU are validated gang members serving indeterminate SHU terms. Figures released by CDCR in 2011 revealed that more than 500 prisoners had spent over ten years in Pelican Bay SHU; of this number, 78 had spent 20 or more years in the SHU. Many prisoners have been there since the prison opened in 1989, held in conditions of severe isolation. Amnesty International considers that the design and operating procedures in the SHU fall short of international standards for humane treatment.

Modelled on the Special Management Unit in Arizona, Pelican Bay SHU is designed to minimize human contact and reduce visual stimulation.[40] It consists of a low level concrete structure divided into cell blocks. The cell blocks themselves are divided into "pods", each containing eight cells arranged on two tiers. The cells have no windows and face a blank wall so that prisoners have no view and cannot see each other. Each pod is self-contained with an exercise pen at one end and a shower at the other so that, apart from visits or occasional trips to the law library or for medical treatment, prisoners need never leave the confines of the pod.

A central control area overlooks each cell-block, with TV screens giving a view into the pods. In general, correctional staff enter the pods only when delivering food to prisoners through slots in the cell doors, or when conducting cell searches. All doors are operated electronically and individually, so that a prisoner can be let out of his cell to go the exercise pen or shower cell without having contact with a guard or another prisoner. Prisoners are shackled with handcuffs and ankle chains whenever they are escorted outside the pod. Apart from visits by a chaplain, people outside the prison system rarely have access to the housing pods. Amnesty International's delegates entered a pod in an area of D wing known as the "short corridor" where alleged gang leaders are held. One prisoner, who had been in the SHU for 22 years, told a delegate that they were the first outsiders he had seen in the cell block for years.

CONDITIONS INSIDE THE CELLS

Prisoners are confined to their cells for at least 22 and a half hours a day. The concrete cells measure approximately 80 square feet and are equipped with two built-in cement bunks against the back wall, a combined toilet and sink unit, a concrete slab which serves as a desk, a fixed stool and small shelf for a TV. Although the bunks allow for double occupancy, albeit in a very confined space, 90% of prisoners currently in Pelican Bay SHU are single-celled and have no physical contact with any other inmate. Prisoners have no work, vocational training, or recreational or group activities of any kind. All meals are taken in the cells, delivered through a slot in the door. The table, toilet and sink unit are positioned close to each other on one side of the cell. As Amnesty International has observed elsewhere, there is a concern about the possible health risks from spending so much time in a confined space, and eating all meals in close proximity to the open toilet.[41]

The 80 square feet cell size just meets the standard set by the American Correctional Association (ACA) for prisoners who spend more than 10 hours a day confined to a single cell. While the standard is not binding, it provides a nationally recognized benchmark for best practice.[42] However, a cell sized 80 square feet falls short of this standard if it accommodates two prisoners. While most prisoners in Pelican Bay SHU are not currently double-celled, Amnesty is concerned that a purpose built, relatively modern facility has been designed to accommodate two prisoners in a space recommended for single occupancy. Although having a suitable cell-mate alleviates some of the effects of isolation, confining prisoners together in a small space for such prolonged periods may cause additional stresses.[43]

The cell doors are constructed of heavy gauge perforated metal which, in the words of the federal judge in the *Madrid* ruling, "significantly blocks vision and light".[44] The only natural light source in each pod comes from a skylight in the ceiling of the central corridor, above and beyond the cell tiers. The cells are primarily lit with a fluorescent light which can be operated by the inmate, with lights in the corridor which stay on at all times but are reportedly dimmed at night. Amnesty International's delegates stood inside a vacant cell and noted that, when the cell light was turned off and the door closed, little natural light entered the cell which was very gloomy, despite it being a bright day. (While it was just possible to read without artificial light, it would be difficult to do this for any length of time or on a dull day.)

The lack of natural light in the housing cells contravenes the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) which state that "In all places where prisoners are required to live or work, a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation" (Rule 11).[45] The UN Special Rapporteur on Torture has said that the provisions in the SMR relating to light and air are "of critical importance to the adequate treatment of detainees in solitary confinement."[46]

The ACA standards also require that "all inmates' rooms/cells provide access to natural light" and that "segregation housing units provide living standards that approximate those of the general population" in prison.[47]

The honeycombed-shaped perforations in the cell doors are designed to be small enough to prevent objects from being thrown through them, while allowing surveillance of the cell interior (CCTV cameras are positioned along the corridor for this purpose). However, it is difficult to focus when looking through the doors at close range. Amnesty International's delegates spoke to several prisoners at the cell door and found their vision became strained after just a few minutes of peering through the perforations in the thick steel. The doors thus have the dual effect of both hampering vision at close range (thereby hindering communication with anyone at the cell door), while allowing a full view into the cell from a distance. The latter means that prisoners are potentially on view at all times even when using the toilet which is situated at the front of the cell, and thus they have no privacy. The structure of the cell doors is just one example in the design of the SHU where, in Amnesty International's view, security considerations have taken precedence over the obligation

to provide a humane environment.

While the perforated doors allow entrance of some fresh air, prisoners have complained of cells becoming very cold in winter, particularly at night, and of not being provided with adequate clothing. The cold temperature is reportedly exacerbated by failure to insulate outside walls at the back of some cells, where the concrete bunks are situated. There are also reports that the ventilation system is inadequate, consisting of recycled air, releasing dust and particles, leading to respiratory problems.[48] While Amnesty International was unable to assess this through its visit, it believes that these complaints should be addressed. CDCR should ensure that cells are sufficiently insulated from cold, are maintained at adequate temperatures and with sufficient ventilation. All prisoners without exception should be provided with adequate clothing, blankets and headwear.

LEXAN CELLS

"He tells me the hardest thing to bear is the lack of human contact. In the SHU, you can't touch people; you lack sunlight, even noise. It is total sensory deprivation".
Wife of a gang validated prisoner who was one of the lead hunger strikers

In the cell block Amnesty International visited, the doors of the eight cells in one pod (F pod) were covered with sheets of unbreakable transparent plastic (Lexan). The plastic sheets are reportedly installed to prevent prisoners thrusting sharp objects or spitting or throwing faeces through the perforations in the cell doors. All of the cells were occupied at the time of the visit (one prisoner per cell) and the organization was told they would usually remain in the Lexan cells "for the duration" of their time in the SHU. Amnesty International is concerned that the Lexan covered cells further isolate prisoners and may worsen the air quality inside the cells by blocking air circulation through the perforated doors. According to testimony about the effect of Lexan cells elsewhere, they allow heat and humidity to build up within the cell during warm weather and muffle sound so that it is more difficult to communicate with someone behind Lexan doors.[49]

Following its visit Amnesty International sought information from CDCR on the number of prisoners held in Lexan-covered cells at Pelican Bay SHU and the reasons why prisoners were held in such cells. This information had not been provided at the time of writing. However, each cell block in the SHU is reported to have one pod of Lexan covered cells. According to a prison mental health expert, most throwing of bodily wastes in prison (also known informally as "gassing") occurs in solitary confinement/isolation units, and, along with non-suicidal self-harm and smearing excrement on cell walls, is usually a symptom of mental health or behavioural problems stemming from, or exacerbated by, the harsh, isolative conditions of confinement.[50] One high ranking official is reported as saying that he had never heard of "gassing" before the advent of the SHU, but once Pelican Bay SHU opened, gassing became a frequent occurrence.[51] Amnesty International appreciates that gassing is a particularly unpleasant experience for officers and may also, in some instance, carry a risk of harm. However, the organization is concerned that prisoners who engaged in disturbed behaviour such as spitting or throwing excrement should be held in Lexan cells instead of receiving treatment for their behaviour in a more therapeutic environment.

EXERCISE

"The roof is a wire mesh with a plexi –glass covering; if you look up your view is distorted by the mesh. You do not get any direct sunlight and you are under surveillance by the video camera the whole time"
Description of a SHU exercise yard in a letter written by an inmate who has been held in the SHU at Pelican Bay for 16 years

SHU Prisoners are allowed to exercise for an hour and a half a day, alone (or with a cell-mate in the few cases where they have one) in a bare, concrete yard at the end of each pod. The narrow yard

has 20 foot high walls, giving no view of the outside and the top is covered with a partially meshed plastic roof. Following the May 2011 hunger strike, CDCR agreed to allow prisoners to have a ball during exercise and was considering the installation of exercise equipment such as a "chin-up" bar. No exercise equipment had been installed in the yards at Pelican Bay or Corcoran SHU at the time of Amnesty International's visit, although the new step-down program states that "isometric exercise equipment" may be allowed during recreation as "deemed appropriate".[52] No seating was provided in the exercise area, which is of concern given that many of the prisoners are elderly and some suffer from joint problems. It is reported that some prisoners do not always take their yard time because of the lack of facilities, or yard time is cancelled due to staff shortages or other disruptions; the yards also reportedly get flooded at times when the weather is wet (Crescent City has one of the wettest climates in California).

"He has constructed this routine as he doesn't want to have time to think about where he is…surprisingly he says that he feels 'time goes by too fast…I get up, I exercise, I clean my cell, I draw, I read, I write letters and then I go to sleep'".

Sister of prisoner issued with an indeterminate SHU sentence at Pelican Bay and held in solitary confinement for more than 21 years

International standards require that prisoners not engaged in outdoor work should have at least an hour of suitable exercise in the open air daily (SMR 21 (1)). The SMR further provide that "Young prisoners and others of suitable age and physique shall receive physical and recreational training during the period of exercise" and that, to this end, "space, installations and equipment should be provided" (SMR 21 (2). While the time allowed in the yard meets the above minimum standard, if adhered to daily, Amnesty International does not believe that conditions in the exercise yards at Pelican Bay are adequate to qualify as "suitable outdoor exercise", particularly for prisoners otherwise confined to cells for long periods. As noted by the federal judge in the *Madrid* v *Gomez* ruling, "given their cell-like design and physical attachment to the pod itself, the pens are more suggestive of satellite cells than areas for exercise or recreation".[53] The need for adequate exercise is particularly important where prisoners are cut off from normal activities and spend long periods in their cells, and in view of the detrimental effects on health of lack of exercise.

One of the requests made by the hunger strikers across the state SHUs was that prisoners be provided with "watch" caps to wear during exercise. A CDCR memorandum to wardens during the hunger strike stated that "In some instances inmates are not being provided with the appropriate attire for inclement weather conditions when being released to the yard in the SHUs." The memorandum reminded staff to provide suitable clothing, noting that several notices about this had been issued since 2005.[54] During its visit to Corcoran SHU, one prisoner told Amnesty International that he and others were forced to improvise, cutting up T-shirts to make caps in cold weather. All prisoners now reportedly have watch caps and can purchase sweat pants and thermals.

CONDITIONS UNNECESSARILY AND DISPROPORTIONATELY HARSH

"I understand that I broke the law, and I have lost liberties because of that. But no one, no matter what they've done, should be denied fundamental human rights. Our constitution protects everyone living under it; fundamental rights must not be left at the prison door"

Letter written by gang validated inmate held in Pelican Bay SHU for 16 years having been imprisoned under the California "three strikes" law

As with a number of US supermax facilities built in the late 1980s and 1990s, Pelican Bay SHU was designed by architects working in close collaboration with correctional staff. While consultation with correctional staff is an appropriate part of the process, in practice this has sometimes resulted in an emphasis on security at the expense of the welfare of prisoners.[55] This is illustrated in Pelican Bay SHU by the design of the cells, the minimal provision for exercise and lack of any space for group activity or out of cell programs. The original design had no law library, despite prisoner access to a law library or other legal services provision being mandatory under the constitution. Following the *Madrid v Gomez* lawsuit, a law library was constructed out of one of the visiting areas.

According to one recent study, two high level correctional administrators who were involved with the building and financing of Pelican Bay in the 1980s had supported the construction of SHU

housing to isolate gang members and limit violence, but said that the isolation was never intended to be indefinite but rather limited to around 18 months – only a fraction of the time many prisoners have now spent there.[56]

The conditions and regime of the Pelican Bay SHU are inconsistent with international norms which provide that imprisonment should not impose hardship beyond that inherent in the deprivation of liberty and maintenance of order. The Human Rights Committee, in its General Comment on Article 10 of the ICCPR emphasizes that persons deprived of their liberty may not be "…subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons…". (General Comment 21)

The SMR state, as a guiding principle that:

Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. (Article 57)

Amnesty International considers that the restrictive conditions built into the design of the Pelican Bay SHU, and the lack of human interaction in an already isolated environment, are gratuitously harsh, going beyond what is necessary for security purposes. There is no justifiable penological reason for depriving prisoners even in a segregated environment of natural light, adequate exercise or meaningful human contact. Access to natural light and exercise are basic needs, essential for physical and mental health. As described below, many prisoners in the SHU are reported to suffer from chronic health problems due to their conditions of confinement.

6. CONDITIONS IN CORCORAN SHU

California State Prison, Corcoran (CSP-COR) has an even larger SHU population than Pelican Bay SHU. The prison houses prisoners at various security levels and was retrofitted soon after it opened in 1988 to include two SHU facilities. There were 1,350 prisoners in the SHU in November 2011, around half of whom were validated gang members or associates, with the other half serving fixed SHU terms for serious disciplinary infractions.

The cells in the SHU are similar to standard general population maximum security cells. They are arranged on two tiers overlooking a central space and are equipped with two bunks, a built-in toilet and sink unit, desk and space for a TV. Unlike Pelican Bay, each cell has a narrow window to the outside. The lights in the cells are controlled by guards and, although they are dimmed at night, some light is on 24 hours a day. The cell doors in the unit Amnesty International visited were constructed of perforated metal of a different design to those in Pelican Bay, the perforations being finer and easier to see through without distortion when talking to someone at the cell door. Some cells have solid metal doors – one prisoner said these cells "can get very hot in summer, especially with two guys". The cells measure 80 square feet, and about half have two prisoners sharing, meaning the cell space falls below ACA standards for inmates confined to cells for 10 hours or more a day; despite the cramped space, some prisoners say they prefer to share a cell to relieve the isolation.

Prisoners in Corcoran SHU are confined to cells for 22 and a half hours a day and are subject to the same restrictions as in the Pelican Bay and other SHU facilities, with very limited possessions and amenities. One difference is that outdoor exercise takes place in individual cages. The yards have a view of other buildings within the prison confines and it is possible to communicate with prisoners in adjacent cages. However, the yards are too small to throw a ball and, at the time of Amnesty International's visit, had no equipment, although provision of some exercise equipment has been proposed as part of the "step-down" program. Three of the five prisoners the delegates interviewed said they had less than 10 hours a week of exercise: one said his building got 7 hours and not every day; another said he got around 7-9 hours a week but "sometimes we don't get it"; and a third said he did not always go to the yard from choice as there was no equipment and nothing to do. Amnesty International recommends that for prisoners confined to cells for prolonged periods the exercise yards be made larger to enable more effective exercise and prisoners be encouraged to take outdoor exercise daily.

7. CONTACT WITH THE OUTSIDE WORLD

"Since 2001 I've been trying to get a hardship transfer...due to my parents' health and age they can no longer travel the long distance, 15-18 hours to Pelican Bay. I was told I couldn't get a transfer but, that they might consider my transfer if I would debrief. In November 2009 my mom passed away, I never got to see her again, the last time I talked to her was in 1999."

Letter written to Amnesty International by a prisoner who has spent more than 14 years in Pelican Bay SHU as an alleged gang associate

Prisoners in the SHU may correspond with their attorneys, families, friends and outside organizations, subject to certain restrictions. However, all visits, both social and legal, are non-contact, taking place behind a glass screen with communication through telephones in the visitation booths. In practice, many prisoners in Pelican Bay have few or no visits. This is largely due to the remote location of the prison and its distance from Los Angeles and Southern California where most prisoners, many of Hispanic origin, come from.

Prisoners have also expressed concern that social visits are allowed only at week-ends for a maximum of 1.5 to 2 hours on each day, which is said to be unduly restrictive, given the distance that relatives have to travel. Many other states and the federal system allow for longer visitation hours on more days of the week. A memorandum from CDCR in July 2011 stated that the department was unable to extend visiting periods in prisons due to budget constraints, but would endeavour to allow more than 2 hours if no-one was waiting for the next slot. While this may increase contact for some prisoners, Amnesty International has received letters from prisoners describing how they have not received visits in years, due to the expense and difficulty of relatives (including elderly parents) being able to travel to the prison. Some prisoners have spent more than a decade in the SHU without visits from their family.

"Every aspect of PBSP-SHU is oppressive/punitive – in an ongoing effort to break men down to debrief…e.g. zero amount of human contact – no phone calls – rare to zero visits with family or friends [visits are behind glass and over a phone]".

Letter sent to Amnesty International from prisoner held in Pelican Bay SHU

California SHU inmates are also denied regular telephone calls with their families, exacerbating their isolation from the outside world. Only prisoners undergoing "debriefing" are allowed to call their relatives at regular intervals; other SHU prisoners are only allowed a telephone call in an emergency, such as the death of a close relative. This is believed to be more restrictive than in most other US correctional systems, including the federal system where even at the most restrictive custody level in the high security unit at ADX-Florence prisoners are allowed two non-legal telephone calls a month. One of the demands of the hunger strikers was for increased family

contact, including one collect call a week home as well allowing extra time for visits and adding one extra visiting day a week.

The new proposals by CDCR to allow prisoners to earn more privileges through a four-year step-down program, includes no change to the bar on phone calls for the first year. The proposals would allow prisoners who are "disciplinary free" (i.e. have not committed any rule violations) one single telephone call at the end of the first year and two at the end of the second year. Amnesty International considers that this remains too restrictive and that denial of regular phone contact, particularly when prisoners are incarcerated a long way from home and have few or no visits, is unnecessarily harsh, and falls short of international human rights standards.

International standards recognize the importance of prisoners maintaining family ties both for their wellbeing and to promote rehabilitation. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) states that a prisoner "shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions" and that "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence" .[57] It is generally recognized that prisoners do better on release if they have good family and other outside support. Article 79 of the SMR states that "Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both".

Article 80 states: "From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation".

As noted below, a significant proportion of SHU inmates will eventually be released from prison. Strong family relations may also in some cases encourage prisoners to dissociate themselves from prison gangs. Two prisoners interviewed by Amnesty International who were in the gang "debriefing" process said that family ties, including marriage in one case, had been influential in their decision to renounce their gang membership.

Amnesty International has received several letters from prisoners who had spent many years in the SHU, stating that the authorities have told them they would have to debrief if they wanted better contact with their families, including being moved to a prison closer to home.

One prisoner of Mexican origin wrote in December 2011 that he had not had visits from his elderly parents since he was sent to Pelican Bay SHU in 1999 as they were too frail to travel the distance. He had applied for several years on hardship grounds for a transfer to a prison further south and nearer to his home, providing medical evidence of his parents' infirmities, but was told by the classification committee that "they might consider my transfer if I would debrief". He wrote, "in November 2009 my mom passed away, I never got to see her again; the last time I talked to her was in 1999". He alleged that correctional officers used his mother's death to pressure him again to debrief, telling him his 89 year old father needed him but he would not see him again if he stayed in the Pelican Bay SHU.

Another prisoner, who last had a visit from his disabled mother in 1992, said he had received only two 10-minute phone calls with her in the following years, one when his sister died in 1998 and one when his grandmother died in 2000. He added that "PBSP staff told me many times that if I wanted to be transferred closer to my mom so I could see her, all I had to do was debrief. She has since passed away".

"I was born and raised in San Diego and most of my family live there or farther away from Pelican Bay – literally 1000 miles away. During these 15 long years, my family (sister) has only been able to make one trip up here. I was allowed one 80 minute visit behind thick glass. There is absolutely no physical contact allowed with anyone. Imagine 10, 20, 30 years without even a hug or touch to your loved ones'

hands, OR hearing your mothers or child's voice on the phone".
Letter from a prisoner who has been held in the Pelican Bay SHU for 15 years

A prisoner wrote that he was transferred from Corcoran SHU to a high security medical unit at New Folsom Prison where he was told he could have a phone call with his family because of his serious medical condition; however, he alleged that, when the time came – and his father was waiting for the call – the captain who had allowed the phone call told him he had to "do something first" and a guard held a piece of paper up to his cell window with the word "debrief" written on it. He said that, when he declined to debrief, he never got to make the call.

Amnesty International recognizes that the authorities have a legitimate interest in encouraging prisoners to break ties to prison gangs. However, the right of prisoners to humane treatment, or transfers or phone calls that prisoners would otherwise be eligible for on compassionate grounds, should not be made conditional on prisoners debriefing. Moreover, the UN Body of Principles explicitly prohibits "taking undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to ... testify against a third person" (Principle 21).

Amnesty International urges the authorities to take steps to ensure that prisoners in Pelican Bay and other SHU facilities have better opportunities for contact with their families. This should include expanding visitation times, where possible. In line with practice in other states and the federal system, Amnesty International urges the authorities to allow all prisoners who are not under specific sanction for serious rule violations while in the SHU to have phone calls with their families at regular intervals. The authorities should also consider transferring prisoners who have spent several years in Pelican Bay SHU to prisons nearer to home.

8. IN-CELL PROGRAMMING AND PRIVILEGES

"With no goals to strive for, or hope for release out of isolation, I can sum up our existence in the SHU with two words, 'soul-crushing'".

Gang validated inmate currently held in Pelican Bay SHU on an indeterminate placement

SHU prisoners may purchase prison-issue TVs or radios and basic "canteen" items (such as hygiene products and certain snack foods) from the prison commissary. Personal possessions and materials for in cell activities are extremely limited. Apart from photographs, in-cell possessions until recently were limited to a combination of up to five books, magazines or newspapers, a pen and some stationery sheets. SHU inmates are allowed to receive one personal package a year of up to 30 pounds of authorized items (including clothing), a quarter of the amount allowed annually to prisoners in the general prison population.

"I would grow my own hair so I could cut it to use as a paint brush and would invent my own colours…I'd use mustard, kool-aid and coffee. I would even rub the dye from images in paper magazines to make my own colours".

Now released prisoner who spent nearly seven years in solitary confinement at Pelican Bay SHU

Since the 2011 hunger strikes, and in line with the prisoners' modest requests for some additional in-cell materials, CDCR has allowed SHU prisoners wall calendars and those who have been "disciplinary free" (i.e. not under sanction for rule violations) for one year to purchase coloured chalk, pen fillers and drawing paper. Prisoners can also earn the right to have an annual photograph taken to send to their families. As noted above, they are also allowed to purchase "sweat pants" and "watch caps", items denied to SHU prisoners before the hunger strike.

Although some SHU prisoners are able to undertake basic educational programs such as high-school level General Educational Development (GED), they cannot attend classes and access is reportedly limited due to a shortage of teaching staff available to deliver and monitor individual in-cell assignments. SHU inmates are also allowed to take college correspondence courses, which were previously withdrawn but reinstated in early 2011. However, access is also limited in practice as many prisoners do not have the necessary standard of literacy or cannot afford to buy books. A scheme to provide a library at Pelican Bay was in jeopardy as one of the outside colleges involved had its funding cut. While CDCR said it had reinstated "proctors" to monitor exams and allow prisoners to get credit for them, access is reported to be "inconsistent".[58]

Amnesty International's delegates were told that only 37 prisoners out of over 1,000 prisoners in PB SHU were enrolled in a GED program at the time of their visit in November 2011, with 22 enrolled in college correspondence courses. A slightly higher number were enrolled in courses in Corcoran, with 65 prisoners in one unit of the SHU reported to be undertaking either GED or college correspondence courses at the time of Amnesty International's visit. While some programming is provided via close circuit TV channels, the organization was told that education programs via TV are supplementary and not part of the core GED coursework.

The wife of an inmate currently held in the Pelican Bay SHU told Amnesty International that her husband would regularly read the dictionary in order to keep his mind active. For a while he also cared for a frog

which he had found in the exercise yard. He would collect worms and bugs to feed the frog. She explained that this interaction was particularly therapeutic for him having being held in solitary confinement without human contact for 16 years. When the hunger strikes began, as punishment for his participation, the guards took the frog away

"If you don't have someone to send you money ($55 per month you are in a constant state of hunger as the food is barely adequate".

Mother of a 37 year old gang-validated inmate at Pelican Bay who has been held in solitary confinement for more than 12 years

Amnesty International considers that the limited in-cell activity available to SHU inmates and access to TV or radio does not compensate for the lack of human interaction, particularly when applied over months and years.

CDCR has proposed that the first two phases of the new "step-down program" include "in-cell studies designed to enhance life skills" such as anger management and "cognitive skill based programming". However, it is hard to envisage how prisoners can be expected to have any meaningful opportunity to develop skills such as anger management during those phases of the step down program when they remain confined to isolated cells, as proposed (see below).

The UN Basic Principles for the Treatment of Prisoners includes the provision that "All prisoners have the right to take part in cultural activities aimed at the full development of the human personality" (Principle 6). The SMR emphasize that prisoners should be given access to a range of social, educational and other programs to prepare for their eventual return to society. Failure to provide such programs to prisoners in long-term segregation is contrary to the USA's obligation under Article 10 (3) of the ICCPR which states that rehabilitation should be an essential aim of any penitentiary system. In its General Comment on Article 10, the Human Rights Committee observed that "No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner".[59]

While Amnesty International was unable to obtain an age breakdown of SHU prisoners, several of the prisoners it interviewed were in their late teens or early 20s when they entered the SHU and had been in the SHU for a decade or more without access to meaningful rehabilitation programs. The organization was told that a lot of prisoners entering SHU housing are in the 18-25 age range. It is generally recognized that young people in particular can be impulsive, impressionable and susceptible to change. While many are serving long prison sentences, most will eventually be released. It is important, both for their life chances and the safety of the wider community, to ensure that they have access to programs to enhance their chances of rehabilitation.

9. PSYCHOLOGICAL AND PHYSICAL EFFECTS OF CONFINEMENT: *MADRID V GOMEZ* AND BEYOND

"The biggest challenge of being held in the SHU is to keep you own head when people around you start to lose it and you can't do anything...it is truly a hellish place to be. The SHU breaks men and it is a constant challenge to keep yourself from being broken".

Pelican Bay SHU inmate who has been held in solitary confinement for ten years

As noted above, in 1995 the US federal court in *Madrid v Gomez* ordered the removal of prisoners from Pelican Bay SHU who were seriously mentally ill or at risk of serious mental illness. Those who met the criteria for exclusion included prisoners who already had a history of serious mental illness or had become severely psychotic while in the SHU. However, there is a significant body of evidence, in the USA and elsewhere, that solitary confinement and social isolation in conditions of reduced environmental stimulation can have serious detrimental psychological consequences, even in prisoners without pre-existing illness.[60]

At the time of the *Madrid* ruling, Pelican Bay had been open for less than six years and most of the prisoners studied in connection with the lawsuit had been housed in the SHU for three years or less. In regard to those prisoners who had not demonstrated they had suffered sufficient harm for their treatment to be unconstitutional, the judge stated, "We cannot begin to speculate on the impact that Pelican Bay SHU conditions may have on inmates confined in the SHU for periods of 10 or 20 years or more".[61] As shown by figures provided by CDCR at the time of the hunger strike in 2011, hundreds of prisoners have now spent ten or more years in Pelican Bay SHU, including many who have been there since it opened in 1989. The physical conditions of their confinement have remained unchanged since *Madrid*.

The *Madrid* ruling cited a review conducted by Dr Stuart Grassian of 50 prisoners in Pelican Bay SHU who had already been identified as experiencing psychiatric problems.[62] Dr Grassian found that most had suffered significant deterioration since they had been in the SHU, becoming actively psychotic and/or suicidal or developing serious psychopathological reactions to the SHU which included perceptual disturbances, intrusive thoughts, severe paranoia and panic disorder. These prisoners fell among the categories of prisoners who the court ruled should be excluded *per se* from the SHU.

However, a representative sample of 100 randomly selected Pelican Bay SHU prisoners studied by Professor Craig Haney during the same period found that, while a sizable minority showed signs of more extreme forms of mental illness, nearly all reported multiple symptoms of psychological distress, including intrusive thoughts, oversensitivity to external stimuli, difficulties with attention or memory, and social withdrawal as well as mood disorders and "feelings of depression or sadness that did not go away".[63]

Many of those same prisoners remain in the Pelican Bay SHU today, 17 years on.[64]

A lawsuit filed in May 2012 on behalf of prisoners who had spent between 11 and 22 years in Pelican Bay SHU describes how individual prisoners have struggled to stave off psychosis and deal with persistent, severe, anxiety and growing feelings of rage by becoming increasingly withdrawn and numbing all feeling: one prisoner described himself as being "in a stupor much of the time", another as feeling "as if I am walking dead"; another how he feels he is "silently screaming 24 hours a day" and hears disembodied voices. Other conditions described by the plaintiffs, all of whom remain in the SHU, include chronic insomnia, hallucinations, mood swings, violent nightmares and panic attacks.[65]

There are also prisoners in Pelican Bay S who have personality disorders or who exhibit chronic disturbed behaviour, who are not classed as seriously mentally ill and thus excludable from the SHU. As noted above (see 5 (ii)) they include prisoners held permanently in Lexan-covered cells for repeatedly spitting or throwing urine or faeces, behaviour rarely seen outside SHU units.

Prisoners in Pelican Bay SHU have also reported a range of physical problems and impairment resulting from, or exacerbated by, their conditions of confinement. Professor Haney found that well over half of the prisoners he evaluated for the *Madrid* litigation reported symptoms associated with hypertension, including "headaches, trembling, sweaty palms, and heart palpitations".[66] Other conditions reported more recently by prisoners or their advocates include deteriorating eyesight as a result of years of deprivation of natural light and confinement in spaces which obstruct vision (including photophobia, vision loss and difficulty focusing); problems with balance; joint problems due to lack of natural light (causing vitamin D deficiency) and exercise; chronic asthma exacerbated by the enclosed conditions; severe insomnia and memory loss. Prisoners have also reportedly suffered loss of skin pigmentation due to the lack of natural light. As described in a letter to the Receiver's Office in September 2011 from a lawyer who works closely with prisoners, "White prisoners are pale; brown prisoners are turning white; black prisoners are lightening to brown".[67]

"Being housed in the SHU has left me looking life a ghost as my color has faded to a very pale shade as many inmates here do without any sunlight to beat down upon our faces. How I long to feel warmth steadily beating on me".
Letter written by a gang validated inmate who has been held in the SHU for 16 years

Similar harmful effects from isolated, cellular confinement have been reported elsewhere. For example, two prisoners in Louisiana have described physical disabilities resulting from years of 23-hour cellular confinement, including osteoarthritis aggravated by inadequate exercise, hypertension, heart disease and insomnia.[68] A study by health experts of prisoners in isolation units in the UK found inmates suffered from various physical disorders resulting from their restrictive conditions of confinement: these included impaired eyesight (due to the lack of any distance vision), weight loss, muscle wastage and memory loss.[69]

While some degree of mental suffering may be an inevitable consequence of imprisonment, international standards are clear that conditions should not impose hardship beyond that which is necessary on security grounds, and must always be consistent with the obligation of humane treatment of prisoners. Amnesty International believes that the detrimental effects on mental and physical health and other harm and suffering endured by prisoners as a result of years of confinement in the excessively harsh conditions of the Pelican Bay SHU breaches international law and standards on humane treatment of prisoners and prohibiting torture or other cruel, inhuman or degrading treatment or punishment.

10. SUICIDES

The severe negative psychological consequences of isolation are reflected in data from various

jurisdictions showing that suicides occur more frequently in isolation units than in the prison population generally.[70] In California, over a five year period from 2006 to 2010, the number of prison suicides averaged 34 a year (higher than the national average),[71] with 42% occurring in administrative segregation or SHU units.[72]

Most suicides in isolation have taken place in administrative segregation units (ASUs). Although prisoners tend generally to be held for shorter periods in ASUs than in the SHU, conditions are harsh, with prisoners confined for 23 hours a day alone in small cells, some without electrical outlets for radio or TV.[73] As shown in Alex Machado's case, below, prisoners may also be held for long periods in ASUs while waiting for a space in the SHU.

At the time of writing, no break-down was available for the number of suicides which took place in segregation units in 2011. However, two of the 34 prison suicides reported in 2011 took place in Pelican Bay prison and both deceased were in isolation units when they took their lives. One prisoner (Alex Machado) was held in an Administrative Segregation Unit (ASU); the other (Johnny Owen Vick) was confined to a cell in the Psychiatric Services Unit where prisoners with SHU terms who have serious mental illness are housed (see 12 (ii) below).

Details of Alex Machado's case, made available by his family, reveal a picture of someone in severe psychological distress during the months leading to his death on 24 October 2011. Alex Machado had been transferred to Pelican Bay in February 2010 after he was validated as a gang associate and told he would serve an indeterminate SHU term. He was held in a solitary cell in the ASU, which serves as an "overflow" for gang-validated prisoners. According to his family, he had shown no significant psychological problems during his prior 11 years of incarceration and he had been literate and articulate, assisting other prisoners with their legal appeals. However, his mental state started to deteriorate significantly after a year of isolation in Pelican Bay. From January 2011 to June 2011, Alex Machado exhibited increasing anxiety and paranoia, according to prison mental health records, with reports noting that he suffered from anxiety, sleeplessness and panic attacks; he also reported being watched, suffering from visual hallucinations and hearing voices and knocking on his cell walls. The records also noted a decline in his attention to hygiene and grooming. On 12 June 2011, he was placed in a crisis cell for threatening to kill himself. He was returned to his cell but was removed shortly afterwards when a guard observed a noose (made from torn strips of mattress) hanging from the air-duct in his cell and faeces smeared on the wall. Days later, he was informed that his mental condition was serious enough to exclude him from being held in the SHU. However, he remained in the ASU, despite continuing to have "active psychotic symptoms". According to his family, his letters became less frequent and increasingly distorted in the final months of his life, during which he remained confined alone to a cell for 22 and a half or more hours a day

According to the autopsy report, Alex Machado was last seen alive at approximately 12.15 am on the day of his death "as he was examined and then cleared by medical staff for a complaint of heart palpitations". Thirty minutes later, an officer found him "hanging inside his cell". In February 2012, Amnesty International wrote to CDCR expressing concern about inmate allegations that Alex Machado had shown signs of distress for several hours before his death but guards took no action. CDCR did not respond to these specific allegations, stating only that "The performance and actions of medical and mental health staff were fully reviewed and have been addressed".[74]

Amnesty International finds it deeply disturbing that any prisoner suffering from the mental health problems described above should continue to be housed in an isolation cell. The case appears illustrative of an ongoing pattern of failure by CDCR to address the health care needs of mentally ill and potentially suicidal inmates.

In California, prison suicides are investigated internally by CDCR and reviewed by clinicians who are not located at the institution where the deaths occurred. The clinicians' reports are then reviewed by the Special Master, a court-appointed monitor charged with overseeing the state's compliance with court-ordered reforms to prison mental health care. In late 2006, CDCR revised its suicide

prevention policies, following concern by the Special Master about the high rate of prison suicides, especially in segregation units. The reforms included increased monitoring of prisoners during their initial weeks in administrative segregation, as well as guard training in resuscitation techniques and crisis response and improved assessment and review procedures within the system generally.

Despite these measures, the annual reports of the expert medical adviser to the Special Master continued to raise many concerns about suicide prevention and response within CDCR institutions. The reports from 2006 to 2010, for example, found that, in 72% to 84% of suicides, there was at least "some degree of inadequate assessment, treatment or intervention", meaning that the incidents were "foreseeable and/or preventable" or "interventions that would have been appropriate were not implemented".[75] Concerns included CPR (cardiopulmonary resuscitation) and/or first aid not being performed in a timely manner; failure by prison staff to make use of available records on inmates' health history; failure to refer inmates to a higher level of care; and failure to provide adequate screening or monitoring of inmates. The reports also noted that the majority of prisoners who committed suicide in CDCR institutions had histories of mental health treatment and/or suicidal behaviour.

The last available report of the Special Master notes that, in 2010, CDCR "devoted a good deal of time and resources to improving their performance in the area of suicide prevention and review", noting that implementation of preventive strategies must continue to be a high priority.[76] However, the continued high rate of suicides in California prisons, and case of Alex Machado in particular, suggests that more needs to be done.

Amnesty International urges the department to ensure that all prisoners receive adequate monitoring for mental health problems and prompt intervention whenever a prisoner displays signs of distress or alerts are made by other prisoners. No prisoner with mental health problems should be held in isolation but should receive treatment in an appropriate mental health care facility. (See also Section 12 (ii) below) Conditions in ASUs should be reviewed and all prisoners held in ASU cells for longer than a few days, should have access to occupational materials and contact with the outside world through TV and/or radio to reduce the effects of extreme isolation and sensory deprivation.

11. LONG TERM EFFECTS OF ISOLATION

"The effect of years of solitary confinement is that you always want to be on your own...the loneliness follows you. I feel anxious in crowds and I don't like being around others. Sometimes I just want to run away and lock myself up...people who do manage to get out of the SHU keep their emotions and pain to themselves because they find it very hard to adapt"

Ex-prisoner who spent almost seven years held in solitary confinement in Pelican Bay

Studies have found that negative effects from prolonged isolation can continue long after release, including sleep disturbances, depression, anxiety, phobias, anger, impaired memory and problems with normal social interaction. This can make it more difficult for individuals, already facing challenges as ex-offenders, to successfully reintegrate into society after they are released from prison. In California, as in other states, most supermax inmates will eventually be released. One study found that, on average, 900 inmates were released on parole annually directly from Pelican Bay and Corcoran SHUs during the ten year period from 1997 to 2007.[77] While some prisoners had spent short periods in other units before being paroled, many were released directly to the street, often with no transitional programming, in some cases after years of solitary confinement or confinement with one other person for 22-24 hours a day. The study found that 62% of prisoners released from Pelican Bay or Corcoran SHU between January 1997 and December 2007 had been returned to prison for violating parole by March of 2008, compared to 46% of all prisoners released during the same period. While the study was unable to draw detailed conclusions from this aggregate data (e.g. the data was not broken down by criminal history of released offenders, age or length of time in the SHU), the figures suggested that prisoners released directly from the SHU may find it more difficult than other prisoners to adjust after release.

CDCR has recently started to include data on SHU releases in its own analyses of recidivism rates. The first CDCR report to include this data, published in November 2011, found that inmates who had spent time in the SHU during their incarceration had a 5% higher recidivism rate than those who had not.[78]

Amnesty International believes that all prisoners serving time in isolation should have access to pre-release or transitional programs that would benefit their reintegration into society. While such programs may be costly, so too are the financial and social costs of SHU confinement. Resources could be better used to focus on providing effective treatment and rehabilitation programs, in line with the USA's international human rights obligations, rather than measures designed solely for incapacitation and security purposes.

12. MEDICAL AND MENTAL HEALTH CARE IN SHU HOUSING

"(My husband) has seen people driven insane in the SHU...especially inmates who don't get visits get crazy".

Wife of gang-validated prisoner who has been at Pelican Bay since 2000

MEDICAL CARE

International standards provide that all prisoners should have access to care to meet their medical needs. The Basic Principles for the Treatment of Prisoners state that prisoners "shall have access to the health services available in the country without discrimination on grounds of their legal situation" (Principle 9); the SMR provide, among other things, that "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals." (SMR 22(2))[79]

Under US law, prison officials must provide adequate care for prisoners' "serious medical needs" and deliberate failure to do so has been held to violate the prohibition of cruel and unusual punishment under the Constitution.

"The more confinement a person is subjected to at Pelican Bay State Prison S.H.U. does slowly take its toll that costs the prisoner in the mind, body and family – without incentives – daily deprivation – the mind and body becomes stagnant – you can only exercise so much."

Letter written to Amnesty International by prisoner in Pelican Bay SHU

There has been ongoing litigation for more than a decade over California's failure to provide adequate medical care to prisoners. In a class action lawsuit, *Brown v Plata*, prisoners alleged that California's deliberate indifference to inmates' serious medical needs amounted to cruel and unusual punishment. The federal court agreed that the California had failed to provide a constitutional standard of health care and in 2002 the State settled the lawsuit by undertaking to reform the system. However, serious problems persisted and in 2006 the court appointed a federal Receiver to take over the management of medical care in all California state prisons in order to oversee the reforms.[80] In January 2012, the court found that, although there was still room for improvement, substantial progress had been made toward achieving a constitutional level of medical care for prisoners.[81]

However, there have been persistent complaints about inadequate provision of medical care for prisoners in Pelican Bay SHU. As noted under Section 9, above, prisoners are reported to suffer from a range of physical problems and illnesses resulting from, or exacerbated by, years of confinement to small cells with little exercise or access to natural light. Prisoners and some advocates have alleged that many of these prisoners, some now in their late 50s or 60s, are not receiving adequate treatment for chronic health problems, including some which are likely to have been caused or at least exacerbated by their detention conditions, such as vitamin D deficiency, osteoporosis, and eye problems. It has been alleged that prisoners have not been provided with medication or equipment to manage their health problems and attendant disabilities, and that there have been delays in treatment or referrals to medical practitioners. One prisoner with

advanced liver disease wrote to Amnesty International stating that repeated recommendations by a liver specialist that he be transferred to a hospital for surgical banding to prevent internal bleeding were ignored for two years, so that he suffered a near-fatal rupture by the time he was sent for the procedure. Another prisoner wrote that he suffered months in acute pain without medication after being diagnosed with a dental nerve disease.

When Amnesty International raised concern about the reports of poor medical care during its visit to Pelican Bay, its delegates were told that any prisoner with a serious medical need, including those in the SHU, would be referred to an outside hospital where necessary. The medical officer said that all individual complaints about medical care were referred to the Receiver.

"We (prisoners) are made to serve an indefinite SHU-term in solitary confinement unless we 'de-brief', and there are many ways to make you debrief. I will attempt to lay out them all: (1) deprive you of adequate medical treatment and make it clear to you that if you debrief you can get all the medical treatment you need (2) deprive you of an adequate diet nutritional and calories. The food that you are provided is so poorly prepared that you cannot even eat it. And the cooks/correctional officials etc. say if you want a well cooked meal or a balanced diet then debrief (3) when you make a complaint about being in an ice cold cell and needing extra linen the officer tell you 'why do you subject yourself to all this harsh treatment when you can just debrief'...and if I do not debrief I am told I'll never be released from solitary confinement'.

Letter sent to Amnesty International by inmate currently held in solitary confinement in Pelican Bay SHU

Since its visit, several prisoners have written to the organization saying they have been told by institutional gang investigators (IGIs) that they will only get better medical care if they "debrief". The *Ruiz v Brown* lawsuit, cited above, alleged that "prisoners with medical concerns are routinely told by prison officials that if they want better medical care for their conditions or illnesses, or improved pain management, the way to obtain adequate care is to debrief".[82] The lawsuit also alleges that, "The denial of adequate medical care at Pelican Bay is not isolated to a few doctors or correctional officials, but is rather a longstanding pattern and practice which, on information and belief, has been officially sanctioned by defendants for the purpose of coercing plaintiff class to debrief".[83]

Amnesty International is not in a position to assess the substance of the above complaints but the allegations are serious. The organization urges CDCR and the Receiver to review specifically the provision of health care to prisoners in the SHU, in particular the "short corridor" (where long-term gang-validated prisoners are held, which has been the source of many of the complaints about inadequate health care). The prison authorities should also issue clear instructions that under no circumstances should medical treatment be used as an inducement to debrief. International standards are clear that all prisoners regardless of their custody status are entitled to treatment which meets their medical and mental health care needs. Prisoners suffering from chronic health problems as result of long-term SHU confinement with inadequate light and exercise should be prioritised for transfer to housing conditions which will not be detrimental to their health.

In January 2012, the court in *Plata v Brown* instructed the parties involved in the case (the plaintiffs, CDCR and Receiver) to prepare for the eventual ending of the Receivership so that the state could resume control of prison medical care. The state Legislative Analyst Office (LAO) noted in report in April 2012 that, "Given CDCR's poor track record in providing medical care to inmates, it would be unwise to return control of the inmate medical program to the department without first establishing independent oversight and evaluation".[84] The LAO recommended that the Legislature create a new oversight board, independent of CDCR, to oversee the delivery of inmate medical care to ensure that the state delivered a constitutional level of medical care, and that the Legislature "might also consider requiring the board to oversee inmate mental health and dental care programs".[85] Amnesty International recommends that the remit of any oversight mechanism include specific reference to the need for review of medical and mental health care for prisoners in segregation units (SHU and ASUs) given the isolated nature of such units and specific health care issues that may arise as a result of such confinement.

MENTAL HEALTH CARE

As a result of the *Madrid v Gomez* ruling prisoners diagnosed with serious mental illness are no longer held in Pelican Bay SHU. The exclusionary criteria include prisoners with major depressive or psychotic disorders, schizophrenia, organic brain damage, mental retardation and "severe personality disorder that is manifested by frequent episodes of psychosis or depression and results in significant functional impairment", as well as inmates who have a prior history of psychosis as a result of SHU confinement. (SHU Mental Health Services Delivery System, (MHSDS) 2009 Revision). Prisoners sentenced to SHU terms who are diagnosed with serious mental illness are housed in the 127-bed Psychiatric Services Unit (PSU) at Pelican Bay prison or are sent to another facility for treatment.[86]

Psychiatric Services Unit

Prisoners assigned to the PSU at Pelican Bay are held in single cells which have narrow windows to the outside and windows in the cell doors. According to the Mental Health Services manual for the PSU, PSU inmates receive individualized treatment plans and have at least ten hours a week of "scheduled structured therapeutic activities".[87] The manual does not specify whether whether this always takes place outside the cell but during its visit to Pelican Bay, Amnesty International was told that PSU prisoners receive therapy sessions outside their cells for a few hours a week. These take place with a psychologist or mental health clinician, either individually or in a small group setting. The group therapy room, observed by the organization during its visit, is an enclosed area in the middle of the unit where prisoners are confined to six individual holding cells with the therapist sitting in front of the cells. There are also cells for individual therapy which are the size of a telephone booth and have solid walls on three sides with mesh at the front; prisoners can sit and have sessions unrestrained in these booths, with the psychologist or other clinician outside. The booths viewed by Amnesty International appeared dark inside and not an ideal therapeutic setting. However, the organization was told all sessions must take place either in the booths or at the cell door, for security reasons.

PSU prisoners have the same amount of outdoor exercise - 10 hours a week - as ordinary SHU inmates, but this is taken in individual outdoor cages instead of an enclosed yard with little sunlight and no view. The PSU exercise cages Amnesty International saw during its visit had a view of the hills and forest in the distance and the cages were close enough to allow prisoners to communicate with the person next to them. Although the cages are an improvement on the SHU yards, they had no equipment and were too small to throw a handball. None of the cages was occupied at the time of Amnesty International's visit (even though the weather was fine) and staff said that prisoners did not always choose to take exercise or that it was sometimes cancelled if the weather was bad.

Although the PSU provides a less harsh environment than the SHU and prisoners receive some out of cell therapy and other treatment, inmates are still confined alone to cells for long periods. Amnesty International believes cell door consultations should be minimised due to lack of privacy and where possible more out of cell therapy should be provided, including in secure dayrooms as an alternative to the booths. Prisoners should be encouraged to take outdoor exercise, both for their physical and mental health, with improvements to the size of the outdoor space, with provision of a covering and equipment or other amenities.

Example of holding cells, similar to those used during therapy sessions in Pelican Bay SHU. Image courtesy of American Friends Service Committee

MENTAL HEALTH MONITORING OF PRISONERS IN PELICAN BAY SHU

International standards, and those set by US professional organizations, require careful monitoring of all prisoners held in isolation due to the negative impact this can have on the psychological health of individuals even without pre-existing illness. The UN SMR require daily monitoring of prisoners placed in "close confinement" (Rule 32). The (US) National Commission for Correctional Health Care (NCCHC) has observed that conditions in super-maximum security isolation facilities "Even for the most stable individuals ...may precipitate mental health or health difficulties" and that "daily contact by medical staff and at least weekly contact with mental health staff is required",

noting that such contacts "must be meaningful and allow sufficient interaction for such assessments to take place".[88] Under its strategic plan for 2010-2015, CDCR has said it intends that 90% of its health care programs will be in "substantial compliance" with NCCHC standards by June 2015.[89]

Clinicians at PSU said they conducted mental health screening of all new arrivals at PBSP and also received inmates from the SHU for treatment at PSU, through referrals by both custody and medical staff. They also said that prisoners themselves can seek a mental health evaluation at any time and that mental health clinicians regularly visited the SHU units. According to the CDCR manual for mental health provision in the SHUs, the objective is for clinical rounds to be conducted "every other week" in order "to identify mental health needs for all inmates who are not currently in [mental health services delivery system]"; the manual states that these rounds are provided by Primary Clinicians in PBSP SHU and Licensed Psychiatric Technicians (LPTs) in other SHUs. However, this falls short of the frequency of monitoring recommended by the NCCHC, above.

Amnesty International is concerned that the isolated nature of the SHU pods and difficulties of communication through cell doors mean that prisoners may not receive the monitoring they require; a prison doctor, while defending cell front consultations as necessary for security purposes, conceded that it was difficult to see the face of an inmate through the perforated cell door.

Concerns about the adequacy of mental health care in Pelican Bay SHU were raised in the *Ruiz v Brown* class action lawsuit, which claims that, during the "rounds" of the SHU pods every two weeks, a psychologist "walks past eight cells in approximately 30 seconds", calling out to prisoners and asking if they are "okay", and that prisoners in neighbouring cells will be fully aware when someone calls out for help. The lawsuit states that "There is no opportunity during this brief encounter for a private consultation with a mental-health practitioner".[90] According to the lawsuit, beyond a "brief intake screening" on arrival to the SHU, the only mental health assessment that many SHU prisoners receive occurs at the Institutional Classification Committee hearings every 180 days, at which a mental health staff member is present. The lawsuit states that, at these hearings, "Each prisoner is asked two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain, and numerous other correctional staff. No further mental health evaluation occurs".[91]

Mental health screening and monitoring is essential to identify those who become psychotic or suffer other serious mental illness requiring removal from the SHU under the *Madrid v Gomez* ruling. However, as noted above, there are prisoners in Pelican Bay reportedly suffering from various behavioural and mental health problems which do not meet the criteria for serious mental illness that would exclude them from the SHU, and who will thus remain in the SHU regardless of the mental health provision available. This is of concern given that conditions such as those in Pelican Bay SHU are liable to be inherently damaging to the physical and mental health of prisoners. Amnesty International urges the authorities to take steps to ensure that no prisoners with mental illness or mental or behavioural disabilities are held in solitary confinement and subjected to the harsh and punitive conditions existing in Pelican Bay SHU.

As noted above, in the case of Alex Machado (see Section 10) there is concern that prisoners who are a potential suicide risk have not been adequately treated while in administrative segregation units other than the SHU, including in Pelican Bay. All prisoners held in segregation units should have adequate mental health monitoring and access to treatment and should not remain for prolonged periods in solitary confinement.

CORCORAN SHU AND ENHANCED OUTPATIENT HUB

Prisoners with serious mental illness are excluded by policy only from Pelican Bay SHU, given the unique harshness of the conditions in that facility. Prisoners with serious mental illness can be held in other SHU facilities and treated under the Correctional Clinical Case Management System (CCCMS) or, if more intervention is required, referred to a prison Enhanced Outpatient Program (EOP) or another mental health facility. In Corcoran, prisoners classified as needing treatment under the

CCCMS may be held in the SHU if they are "stabilised" on medication. While they are monitored by mental health staff, they are subject to the same general conditions as all SHU prisoners, confined to cells for 22 and a half hours a day. Amnesty International was told by staff that CCCMS inmates are seen almost daily by nurses dispensing medication, at least monthly by a clinician and every 90 days by the psychiatrist.

Corcoran prison also has an EOP hub in the Administrative Segregation Unit (ASU) which houses SHU inmates with serious mental illness who require more active intervention and monitoring, who will be referred to other psychiatric facilities if beds are available. EOP prisoners also spend most of their time confined to cells but are reportedly seen daily by licensed nursing staff and at least weekly by a mental health clinician.

While CDCR guidelines provide that consultations must be conducted in a confidential setting as far as possible, the Corcoran chief psychologist told Amnesty International that consultations and therapy for SMI SHU inmates (including those in the EOP/ASU hub) always takes place either at the cell door or in a holding booth within the consultation room, for security reasons. He expressed the view that SMI inmates housed in the Corcoran SHU received humane treatment, with some outdoor exercise and access to therapeutic materials in their cells. However, Amnesty International believes that prisoners with serious mental illness should not be housed in an environment where they are confined to cells for prolonged periods with little opportunity for social or therapeutic interaction. Amnesty International notes that the manual for the delivery of mental health services for prisoners in the SHU states that "While some therapeutic activities may take place within the cell, wherever possible treatment activities should take place outside the cell".[92]

13. WOMEN PRISONERS IN THE SHU

Fifty-eight women were serving SHU terms in Valley State Prison for Women at the time of Amnesty International's visit in November 2011. As with the male SHU population, women SHU inmates are confined to a cell for at least 22 and a half hours a day, alone or with a cell-mate, and have no access to prison work, training or vocational programs.

Nearly all female SHU prisoners are serving defined SHU terms for disciplinary offences, reportedly ranging from a few months to a year or more. While the organization was unable to obtain a breakdown of offences for which women had been sentenced to the SHU, a senior staff member said that most were there for "assaultive" or "disruptive" behaviour. Some assaults involved throwing bodily waste or spitting at a prison staff member, which, as noted above, is indicative of mental health or behavioural problems. There were women in the SHU who were in the prison's "Correctional Clinical Case Management System" and thus receiving treatment or monitoring for mental illness. A team of mental health professionals was on duty during week-days and on call at week-ends. There was treatment room in the unit, with therapy taking place in individual booths. Staff reported that some women found it easier to cope in the SHU than in the general prison population, as did one of the prisoners interviewed by Amnesty International. However, the organization remains concerned that prisoners, especially those with mental illness or emotional or behavioural problems, are confined to cells for such long periods in what amount to punitive conditions.

In early 2012, the female SHU population was moved from Valley State Prison to the California Institution for Women (CIW), where part of the facility has been converted into a SHU unit. There were 68 prisoners in the CIW SHU as of June 2012. According to figures provided by CDCR in July 2012, 50 inmates in the SHU and the adjacent administrative segregation unit (ASU) were in the Correctional Clinical Case Management System. [93] As the SHU/ASU combined reportedly houses fewer than 100 prisoners, this indicates that a significant proportion of the inmates confined to the units, and thus in isolation, suffer from mental illness.

Around two-thirds of the custody staff at CIW are male, similar to the proportion in Valley State prison. While there is a slightly lower ratio of male to female staff in the CIW SHU during the morning shift (60% male officers to 40% female officers), there are more male custody officers working other shifts. Only male staff are assigned to the SHU/ASU during the night shift and 75% of custody staff working the afternoon and early evening shift are male.[94] This is contrary to international standards which provide that female prisoners should be attended and supervised only by female officers, and that male staff providing services in female facilities should always be accompanied by a female officer (SMR 53(2) and (3)). The UN Rules for the Treatment of Women Prisoners (Bangkok Rules), adopted by the UN General Assembly in November 2010 confirmed the principles in the SMR.[95]

The authorities have stated that anti-discrimination employment laws, as well as specific labour agreements involving correctional officers in California, mean that CDCR cannot refuse to employ male guards in women's prisons; however international standards provide that measures designed solely to protect the rights and special status of women are not considered discriminatory ((Principle 5 (2), Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment). Restrictions on the access of male staff to areas of prisons where women are showering or undressing are necessary to protect the right of detainees to privacy.

The presence of unsupervised male staff in women's correctional facilities raises a range of concerns for the protection of human rights. There have been widespread reports of sexual misconduct by male correctional staff against women inmates in prisons across the USA, including in California. During a previous Amnesty International visit to Valley State prison in 1998, prisoners reported that it was common for some male officers to watch them dressing and undressing in their cells and to touch their genitals while conducting frisk searches (pat-down searches of clothed inmates), and to use sexually offensive language. [96] While male officers in California are no longer permitted to carry out any searches of female inmates, and there are reportedly improved procedures for addressing sexual misconduct, the organization remains concerned by procedures which allow male custody staff unsupervised access to women's housing units. This is of particular concern in the SHU, where prisoners are able to be observed at all times in their cells.

Under prison regulations, female SHU inmates, like male prisoners, must be "in full view" at all times. In Valley State SHU, only female officers were allowed in the central observation booth, as this gave a full view into the showers. However, the showers were sited in the main unit where male and female custody staff patrolled; the showers had open bars with a covered section in the middle described as a modesty panel, but did not afford total privacy. Within the cells, the toilet and sink were situated by the cell doors which had windows looking onto the tier patrolled by male and female staff. It was reported that most women wanted to cover their cell windows while washing at the sink but that the practice was against the rules. Amnesty International believes that allowing male staff to patrol areas where women may be viewed in their cells while dressing or washing, or when taking showers, is inherently degrading and a violation of the right of prisoners to be treated with respect for their human dignity, and the right to privacy, as enshrined in the ICCPR.

Amnesty International recommends that as a general rule female prisoners should be supervised only by female staff, in line with the SMR. The UN Human Rights Committee, in commenting on the USA's report on its implementation of its obligations under the ICCPR, has recommended that "legislation allowing male officers access to women's quarters should be amended to provide at least that they will always be accompanied by women officers." (CCPR/C/USA/CO/3/Rev.1, 2006: 33).

Amnesty International recommends that in order to comply with the SMR and the Human Rights Committee's recommendations, male staff should not be deployed in the women's SHU area or, at a minimum, all areas of the SHU should at all times be attended and supervised by female staff and that at no time should any areas of the SHU be attended by male staff alone. Male staff should be not be required or permitted to carry out duties or enter locations in the SHU where they can observe women in the shower or at other times when they are undressed. As the organization has noted in previous reports, a growing number of jurisdictions in the USA have placed certain restrictions on male duties in women's prisons and the US courts have upheld such restrictions as lawful.[97] In some states this has included prohibition of male staff from working in female housing areas or in female bathroom or shower areas.

14. CRITERA AND CURRENT PROCEDURE FOR SHU ASSIGNMENTS

"People are validated on the basis of one individual saying "I heard him say something...or I saw him do something" There is no policing of the system, they do whatever they want and they get away with it. The SHU units are like torture chambers...my main issue is with the solitary confinement and the validation"

Sister of a 50 year old gang validated prisoner, originally sentenced to 15 years to life; he has now been imprisoned for 25 years and has been in solitary confinement for a total of 21 years

Amnesty International was unable to obtain a detailed break-down of the current California SHU population; however, based on the overall figures on numbers in the SHU, it appears that around a third are serving determinate (fixed) SHU terms for serious offences or rule violations set out under Title 15 of the California Code of Regulations, Section 3315. Guidelines for the length of fixed SHU terms range from two months to five years for offences including sexual misconduct, harassment, threats, assaults, escape attempts, weapons possession and murder (Section 3341.5). Some of the offences carrying a SHU term include acts which are classified as serious assaults or other offences but may also be symptoms of behavioural or mental health problems.[98] Offences listed as serious rule violations (SRV) carrying a potential SHU term also include offences such as "Tattooing or possession of tattoo paraphernalia", "Self mutilation or attempted suicide for the purpose of manipulation" and "A repeated pattern of rule violations for the same offense".

Prisoners charged with serious disciplinary offences are entitled to some due process protections in the internal proceedings against them, although these are less than those required in a criminal trial. They include written notice of the charges and a statement of the evidence to be relied on, a hearing before an impartial officer at which the prisoner may produce documents in his or her defence and has a conditional right to call and question witnesses. The accused prisoner will also be assigned a staff member to assist in the investigation and/or preparation and presentation of a defence, where this is considered necessary for a fair hearing.[99] Prisoners accused of criminal misconduct while in prison may also have their cases referred to the prosecutor for trial in the criminal courts which could result in an additional prison sentence within the range set for the criminal offence. Once a prisoner has been found guilty of an offence carrying a possible SHU term, the Institutional Classification Committee (ICC)[100] decides on whether or not the prisoner will be assigned to the SHU and sets the term according to the guidelines for that offence. Prisoners serving determinate SHU terms can have their terms reduced for good behaviour. The term may be extended if the prisoner commits repeat offences while in the SHU, or they may be retained in the SHU if their release is considered to constitute a severe security risk.[101]

The large majority of the California SHU population – some 2,280 prisoners[102] – have been assigned

to indeterminate (indefinite) SHU terms on the basis of being "validated" as a member or associate of a prison gang. Validations are made through an internal procedure and prisoners can be assigned to indefinite SHU terms by CDCR without being accused or convicted of any offence or rule violation.

In his 2011 report on solitary confinement, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment urged states to adopt procedural safeguards when imposing solitary confinement, in order to reduce the chances of it being applied in an "arbitrary or excessive" manner. His recommendations included providing individuals with a "genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative review"; informing the detained person of what he or she must do to be removed from solitary confinement; a meaningful appeals process and review by an independent body, as well as an opportunity to appeal to the courts.[103]

SHU terms in California are subject to administrative review, but there is no external review of such assignments other than through the courts. As described below, prisoner advocates and others have criticised the internal review process as failing to provide adequate safeguards, particularly for prisoners given indefinite SHU terms on the basis of a gang validation. While prisoners may bring court actions challenging their gang validations or SHU assignments or conditions, prison administrators are afforded wide discretion in measures taken on security grounds and prisoners face significant obstacles in bringing such actions.[104]

PRISONERS SERVING INDETERMINATE SHU TERMS ON THE BASIS OF GANG VALIDATIONS

"My position remains…California Department of Corrections/PBSP-SHU policies and practices, have violated our human rights and subjected us to torture – for the purpose of coercing inmates into becoming informants against other inmates, etc., for the state."

Letter written to Amnesty International by prisoner held in solitary confinement in Pelican Bay SHU

As noted above, for prisoners who are validated as gang members or associates, the main route out of the SHU to date has been to "debrief", a process which requires them to renounce their gang connections and provide detailed information on other alleged prison gang members or associates. This is a procedure which many prisoners decline to undertake for various reasons: they may not want to "snitch" on (inform on) other inmates on principle or because of the risk of retaliation against themselves or family members; in other cases prisoners dispute being involved in a gang or they dispute the level of their alleged involvement or deny any recent involvement, and thus maintain they have no evidence to provide. In 2005, CDCR introduced new regulations to provide an alternative route out of the SHU by creating a category of "inactive status", whereby SHU prisoners who can establish they have not been involved in gang activity for a minimum of six years may be considered for release from the SHU by the classification committee.

Despite the introduction of "inactive" status, hundreds of prisoners have continued to serve years of indefinite SHU confinement. In August 2011, CDCR spokesperson Scott Kernan reported that the average term served by prisoners in SHU housing was 6.8 years.[105] However, as described above, more than 500 prisoners in Pelican Bay in 2011 (around half the prison's SHU population) had spent over ten years in the SHU; 222 had been in the SHU for 15 or more years and 78 more than 20 years. Many had been in Pelican Bay SHU since it opened in 1989, all held under the same harsh conditions throughout that period, without any ability to change their situation through good behaviour or programming.[106] Amnesty International has received information about prisoners, some now in their late 50s or 60s, who have spent decades in the SHU without incurring any significant disciplinary write-ups; for some prisoners, their first major "rule violation" was for participating in the 2011 hunger strike.

CONCERNS ABOUT GANG VALIDATION CRITERIA

"So, the suffering is to make you feel hopeless, helpless…and your only way to stop the suffering is to debrief".

Gang validated inmate currently held in Pelican Bay SHU

Amnesty International is not in a position to evaluate in detail the criteria deployed in the gang validation process. However, there has been widespread criticism from prisoners, advocates and others that the present process is too discretionary and that, while three independent "source items" are required to validate someone as a gang member or associate, these need not relate to any specific gang-related activity or illegal act. The independent "source items" can include tattoos or being in possession of books or materials or, it is alleged, simply being seen talking to another alleged gang member in a unit where a prisoner is housed. If a prisoner is visited by someone suspected of being a gang member or associate, even if they are visiting as a relative, this can also be used against them. Information may also be based on confidential sources which can be impossible to challenge.[107]

Under the regulations, the term "associate" is someone deemed to be involved "periodically or regularly with members or associates of a gang", and, it is alleged, can be loosely applied to include association with prisoners of similar background and the same racial group. Many prisoners have also complained that, despite being free of any gang activities or association for six years or more, they have not been held eligible for release from the SHU. Prisoners have allegedly been denied inactive status based solely on being on a list of names provided by anonymous informants, or for having certain drawings in their cell or being in possession of literature associated with political ideologies such as the Black Panthers.

The harsh conditions of the SHU have presented prisoners with what a federal court has described as "an overwhelming incentive for an inmate to embrace the risk of debriefing". [108] According to prisoner advocates and attorneys, pressure to debrief can serve to compound problems regarding the reliability of evidence. As one lawyer put it, if a prisoner is wrongly assigned to the SHU, or has no current information, but decides to debrief, "they won't have evidence to disclose, so they have a strong motive ... to name others/anyone". He referred to this as a "downward spiral" in which the named individuals will in turn be placed in the SHU, as can anyone associating with them.

CONCERNS ABOUT DUE PROCESS AND THE HARSH CONSEQUENCES OF AN INDETERMINATE SHU ASSIGNMENT

"I've been eligible for parole since 2004 – the parole board has told me [1998, 2001, 2003, 2008], if I ever expect to receive a parole date, I have to debrief and get out of SHU".

Letter written to Amnesty International by prisoner held in solitary confinement for more than 15 years as a gang associate

Concerns have been expressed about the fairness of both the initial gang validation process and the review of indeterminate SHU assignments. The federal courts have ruled that prisoners are entitled to some due process when they are assigned to an indefinite SHU term on the basis of a gang validation or other security ground. [109] However, because such assignments are considered to be an administrative measure and not "punishment", the due process protections required are less than in a criminal or serious disciplinary proceeding. The US Supreme Court has held that due process requirements are met where prisoners are given a statement of the reasons for their assignment to a "supermax" facility, which would "serve as a guide for future behaviour", have an opportunity to be heard in the matter, and the placement is subject to appeal and administrative review. (*Wilkinson v Austin, 2005*). [110] There is no requirement for further due process protection, such as an adversarial proceeding or for the prisoner to be represented by counsel or be able to call or cross examine witnesses. The courts have ruled that there must be "some evidence" with "some indicia of reliability" to support a gang validation, but this standard is met if there is any evidence in the record that could support a validation. The Supreme Court has held that reviews of long-term segregation must be "meaningful" to avoid them being used a "pretext for indefinite confinement,"[111] however, no clear standard has been set as to what constitutes "meaningful" review of current supermax confinement and courts have upheld review procedures that provide only minimal protections.[112]

In California, Institutional Gang Investigators (IGIs) attached to each prison compile the evidence that forms the basis of a gang validation. Following challenges to the procedures in the courts,

prisoners are entitled to notice of the allegations, disclosure of all source items used in the validation review and copies of all non-confidential source documents. They are also entitled to an interview with the IGI at which they must have an opportunity to present their views about the evidence used for the validation verbally or in writing, and be provided with a written record of the interview. The "validation package" is then sent to the Office of Correctional Safety (OCS) at CDCR which reviews the record and accepts or rejects the validation. It is reported that the OCS very rarely rejects the validations and that, in practice, the IGIs are the "primary decision makers". Critics of the procedure have alleged that IGIs vary in terms of their competence and reliability, with different criteria sometimes applied in different institutions.[113] Prisoners' lawyers and other advocates have further maintained that the OCS does not provide any meaningful independent oversight or investigation of the IGI decisions.

A prison classification committee reviews an indeterminate SHU placement every 180 days at a hearing the prisoner is entitled to attend; the prisoner may also present documentary evidence to support any application for change in status and may have a limited right to a staff assistant.[114] However, under the present system, these reviews are reported to do little more than confirm the original assignment, unless the prisoner agrees to debrief or is eligible for consideration under the six-year "inactive" criteria. Amnesty International has received several letters from prisoners stating that they no longer attend the review hearings, something its delegates were also told during cell-front interviews. According to a recent class action lawsuit brought on behalf of prisoners who have served more than ten years in Pelican Bay SHU, "No examination of continued gang activity or association occurs at the 180 day review, nor is there any assessment of whether the prisoner's behaviour requires continued SHU placement. For this reason, such reviews are meaningless and few Pelican Bay SHU prisoners attend them." [115]

While the procedures fall short of the due process protections required if a prisoner is charged with a criminal or serious disciplinary offence, the consequences of a SHU assignment in California can be severe, not just in terms of the length of time prisoners may be isolated and deprived of access to work, vocational training or other programs, but also in terms of the time served in prison. Reportedly, around a quarter of the SHU population are serving "term to life" sentences (known as "indeterminate sentences"), where a minimum term is imposed up to life imprisonment (for example "7 years to life" or "25 years to life"). Prisoners with these sentences are eligible for a parole hearing once they have served the minimum eligible release date given in their sentence. Amnesty International has been told that, in practice, prisoners serving term to life sentences will never be granted parole while they are in the SHU. This is said to be partly because they have no access to programs which would enable them to show that they meet the criteria for parole eligibility but also because of what has been referred to as an "unwritten policy" of not granting parole to alleged gang affiliates serving SHU terms.[116] Amnesty International has heard from prisoners who served their minimum term years ago but have been denied parole solely on the basis of being in the SHU; some have reportedly been told by parole board members that they will not get parole unless they debrief. Also, due to legislative changes in 2010, prisoners serving determinate prison sentences can no longer earn "good conduct" credits (to reduce the time served) while they are in the SHU for alleged gang affiliations and thus will spend longer in prison than if they were in the prison general population.

Some prisoners rights lawyers have expressed concern that, in practice, the review of indeterminate SHU assignments in California falls short of the minimal standard approved by the US Supreme Court in *Wilkinson v Austin*. Unlike the procedure for assignment to the Ohio State Penitentiary (the subject of the *Wilkinson* decision), for example, California prisoners are not necessarily provided with notice of the specific factual reasons for an indeterminate SHU assignment nor as in Ohio do they have two levels of appeal; the classification committee is not required to provide a written statement of every basis for the recommendation to retain a prisoner in the SHU at the review hearing, unlike in Ohio.[117]

15. CDCR'S PROPOSED REFORMS OF CRITERIA FOR INDETERMINATE SHU ASSIGNMENTS AND INTRODUCTION OF STEP-DOWN PROGRAM

"I've already been in SHU since 1988, what do I need to work on? What exactly are they going to see in my attitude and actions during the four phases of the step-down program that they haven't seen already in the past twenty plus years during my extreme isolated confinement?"

Pelican Bay SHU inmate's response to policy reforms, May 2012

During Amnesty International's meetings with CDCR staff in November 2011, the department stressed that there were inmates in the SHU with serious gang connections, but acknowledged that they "over-validated" and that there were prisoners in the SHU who did not warrant such a restrictive level of housing. CDCR also acknowledged that there were people assigned to the SHU as gang associates who had no direct role in gang activity. CDCR stated that the reforms under consideration were aimed at making the system fairer as well as targeting resources more effectively, taking into account the high cost of SHU confinement and the need to manage a tight budget. Amnesty International was told that the process would ultimately reduce the SHU population to ensure that only prisoners who could not be safely housed in a less secure setting would be assigned to the SHU.

In March 2012, CDCR published its proposals for reform in a document entitled *Security Threat Group Prevention, Identification and Management Strategy*. The strategy outlined proposals for 1) amending current policy on identifying and managing gang members and other disruptive groups and 2) implementing a new, "behaviour based" step down process for gang members or associates who are assigned to the SHU.

The new proposals broaden the criteria to include management not just of prison gangs originating within prison, but also "other criminal gangs, such as street gangs or disruptive groups comprised of members and associates". CDCR will no longer utilize the terms "Prison Gangs" and "Disruptive Groups", and all will now fall within a new category of a Security Threat Group (STG). CDCR will certify the existing main prison gangs, and other groups identified as presenting a "severe threat" to staff safety and institutional security, as STG-I. Other groups, such as those associated with street gangs, who according to CDCR may play a secondary role to the main prison gangs, will be

labelled STG-II.

Under the proposals, only validated STG-I Members will be automatically assigned to the SHU, based on the validation alone. Prisoners who are validated as STG-I Associates (individuals not formally accepted into a gang but who are involved "periodically or regularly with gang members or associates") "will not routinely be placed in SHU, based solely on their validation", but SHU assignment in these cases will depend upon whether or not they engaged in "serious disciplinary and/or criminal gang behaviour."[118] The proposals state that STG-II Members and Associates will not be automatically assigned to the SHU, but may be considered for placement if they are found to engage in "repetitive criminal gang behaviour".

The reforms include proposals to make the gang validation process more objective by introducing a "weighted" point system alongside the three independent source items that are already required. This means that at least 10 points will be required to validate someone as an STG member or associate, based on a weighted scale (e.g. a symbol, clothing or hand signals associated with a certified gang, or written materials containing a gang symbol, would incur 2 points, information from an informant 3 points, visits from an alleged gang member or associate 4 points, and so on).

However, the proposals will still use the same criteria as under the present system to validate someone as an STG member or associate. This means that a prisoner can still be validated as an STG-I member and assigned to an indeterminate SHU term on the basis of symbols, or who he associates or is seen with, without evidence of actual gang-related activity. Continued placement in the SHU "based on membership and not behaviour" has been described by advocates as one of the main problems with the new proposals. There is also concern that, without the need to provide evidence of specific criminal or gang-related activities in order to validate someone, the distinction between who is a "member" and who is an "associate" may remain blurred in practice, with some prisoners who have only loose gang associations being wrongfully assigned to the SHU.

Under the proposals, the IGIs will continue to conduct the investigations into gang activity and prepare the validation packages for OCS approval. Prisoner representatives and others have expressed concern that no substantial "due process" changes have been proposed to the system, and that there remain insufficient checks and balances.[119] CDCR is reported to have responded to some of these concerns by considering allowing prisoners some representation at their initial classification hearing and adding another layer of administrative review. However, no details of any amendments to the proposals had been published as of August 2012.

Some advocates have expressed concern that broadening the criteria for an STG group to include prisoners who are associated with street gangs or other groups could potentially increase assignments to the SHU. However, CDCR has stated it anticipates that its proposals will decrease the number of people held in the SHU, and in Administrative Segregation Units (which often serve as a SHU overflow), by making SHU-assignments for most STG members or associates based on serious criminal behaviour or rule violations, and by allowing a route out of the SHU through the step-down process, which would replace the six-year "inactive" status.

While measures to reduce the number of prisoners held in security housing units are a positive step, in Amnesty International's view the proposals should ensure that only prisoners who present a clear and present threat, who cannot be safely housed in a less secure setting, are assigned to the SHU. Given the serious consequences of SHU confinement, the authorities should ensure that STG validations are based on a thorough and impartial investigation, and only with concrete evidence of gang-related activity posing such a clear and present threat; that prisoners have a fair opportunity to contest the evidence; and that such decisions are subject to regular, meaningful review.

THE STEP-DOWN PROCEDURE

The proposals include a new step-down program (SDP) for prisoners assigned to indeterminate SHU housing based on STG validation. CDCR has described the SDP as an "incentive based multi-step process" involving "structured activities and programming", aimed at preparing inmates for

eventual release back to the general prison population or Special Needs Yard (SNY).[120]

The SDP consists of five steps, the first four of which would take place within the SHU, each step lasting a minimum of 12 months. The SDP would replace the six-year inactive review, allowing prisoners to work their way out of the SHU in four years, should they successfully pass through the required steps. The proposals make clear that prisoners can only complete the steps "providing they remain free of gang activity and demonstrate compliance with the program requirements".[121]

Under Steps 1 and 2, prisoners will remain confined to their cells for 22 and a half hours a day, with 10 hours out of cell exercise a week. The proposals state that recreation may include the use of "isometric and exercise equipment as determined and deemed appropriate", otherwise there is no change to their physical conditions of confinement. All meals would continue to be eaten inside the cell and access to personal possessions and hobby-craft materials would remain limited. Prisoners undergoing Steps 1 and 2 of the SDP – which is described by CDCR as an "observation phase" – will be required to undertake "in-cell studies designed to enhance life skills" such as anger management and other cognitive skill based programming. The prisoner's progress will be assessed by the institutional classification committee (ICC) every six months, and, if judged to have completed one step successfully after 12 months, will move to the next step.

Step 3 would involve some peer interaction of "mixed gang affiliations", with program components "to include both individual and group meetings that provide anger management, parenting, academic and substance abuse programs, and other self help groups". Group meetings would be limited in size and prisoners would be held in individual "therapeutic treatment modules": individual cages about the size of a telephone kiosk. Otherwise, the only change to conditions is an increase in canteen money (from 25% to 40% of what is allowed to general population inmates), no significant increase in-cell possessions, (allowing up to ten (non-educational) books or magazines and the addition of dominoes). The proposals include no change to the amount of outdoor recreation and all meals would be eaten in the cells as at present.

Step 4 would include some expanded programs, including some work and educational programs within the unit, with individual and group therapeutic treatment, in modules, as above "or unrestrained as determined by ICC". The proposals would also allow "Yard interaction with inmates of diverse affiliations" after six months of programming in Step 4. Meals would also be consumed within the section with other SDP inmates.

Prisoners completing all four steps of the SHU SDP will be released into a maximum security (level 1V) general population setting or a SNY for a 12 month observation period. If they complete this phase "with no documented evidence of continued gang involvement" they will have completed the program and may be transferred to any other facility consistent with their classification score. These prisoners will remain on "monitored" status for the rest of their sentence and could be sent back to the SHU at any time (via ICC review) if they commit a serious disciplinary offence or demonstrate "new criminal gang behaviour".

The opportunity for prisoners to earn their way out of the SHU through renouncing their gang membership and "debriefing" would continue to exist as an alternative to SDP. The proposals state that, at any stage of the SDP, the inmate can be asked to be put into the debriefing program instead.

CONCERNS ABOUT CONTINUED ISOLATION DURING THE STEP-DOWN PROGRAM

Amnesty International welcomes in principle proposals to introduce a step-down program to replace the present system where prisoners remain in the same harsh conditions for years on end, with no structured incentives to change their behaviour. However, the organization is deeply concerned that, under the new proposals, prisoners would remain confined to solitary or double cells for a minimum of two years, with no change to their isolated conditions of confinement. These concerns are compounded by the proposal that all male inmates undergoing steps 1 and 2 of the SDP (apart from those excluded on grounds of serious mental illness) will be housed in Pelican Bay

SHU; thus some SHU inmates at present housed in other facilities may see their conditions actually worsen, by being confined to windowless cells in an even more isolated environment, with an exercise yard that offers no view to the outside.

Given the negative effects that prolonged isolation can have on physical and psychological health, it is hard to see how the in-cell "anger management" and cognitive programs offered during the first two steps of the SDP can have a positive impact when conducted in such a restrictive setting. It is also unclear how a prisoner's progress can be measured in the absence of any group interaction and with so little time spent outside the cell. While no details have been provided of how the in-cell programs will be delivered, they are likely to be via closed-circuit TV, given the high cost of delivering face-to-face programming in a SHU setting. Even after two years of clear conduct, prisoners would still spend most of their time confined to isolation cells in phase three, with the only inter-action with other inmates taking place in individual cages ("therapy modules").

The CDCR proposals state that "failure to complete program requirements and/or confirmed criminal gang behaviours during any program step", will require the offender to "repeat or regress to a prior step as determined by ICC". Prisoner advocates have expressed concern that correctional staff and IGIs will still exercise considerable influence on who remains in the SHU, particularly in the absence of positive opportunities to demonstrate good behaviour as indicated above. The proposals state that the prisoner must be "free of gang activity" in order to complete the program, and that staff will monitor and report any gang behaviour. Some prisoners have expressed a fear that without clear behavioural-based criteria as to what actually constitutes gang activity, they may still be held in the SHU indefinitely, without posing a danger to others or to institutional security.

Some other states have introduced systems which enable high risk prisoners to participate in meaningful programs and return safely to the general prison population within a far shorter time frame than is proposed in California.

In Connecticut, prison gang members assessed as a security threat undergo a three-phase program, where they can progress through all three phases and back to the general prison population within a period of nine months.[122] Prisoners, who must renounce gang activity in order to complete the program, are housed two per cell at all three phases and, after six months (phase 3), have access to a dayroom and gymnasium as well as interactive programs and counselling. Evaluations of the program, which has been running since 1994, have reported it to be a success, with low recidivism rates (measured by return to gang activity) among prisoners who have completed it.[123]

From late 2007 to early 2009 Mississippi reduced its most secure segregated population by 80% following reforms to the criteria for assigning prisoners to the unit (Unit 32 at the state prison at Parchman). Those who remained in Unit 32, who included STG leaders, were given opportunities to move at an early stage from the "closed tier" (cellular isolation) section to an "open tier" where they had group programs, access to sporting activities and congregate dining, before moving out of the unit altogether. According to Mississippi Corrections Department Deputy Commissioner Emmitt Sparkman,

"We were able to identify inmates who were a threat and those people remained in segregation. But they participated in programs, we gave them more freedoms, and we saw a huge decrease in violence in that unit …. Once prisoners in Unit 32 saw the incentives they could get, every week we saw inmates progress to the next level".[124]

Unit 32 was closed altogether in 2010, and use of long-term segregation has reportedly been reduced throughout the state with no adverse effects on institutional safety.

An external review of administrative segregation in the Colorado prison system in 2011 found a two-year average length of stay in isolation units to be too long. Consultants for the National Institute of Corrections recommended a structured level system for prisoners classified as a high security risk which would allow them to be returned to the general prison population within nine months if compliant with the program, with specific rules and privileges at each stage; the report criticized existing programs provided at the state's "supermax" facility (Colorado State

Penitentiary) as being of "questionable value", noting that almost all programs and activities were provided by staff at the cell-side and there were no procedures for reducing use of restraints and allowing group activities. [125]

Colorado has since taken steps to reduce the numbers of prisoners in long-term isolation, joining a growing number of other states who have reduced, or are in the process of reducing, their "supermax" populations, including Illinois, Maine, Ohio and Washington.

EXISTING SHU PRISONERS

CDCR's reform proposals include plans to review the cases of all existing SHU prisoners. Amnesty International understood from a meeting with CDCR in November 2011, that the review would decide which prisoners, under the revised criteria, no longer needed to be in the SHU and that it could go ahead before the reforms were finalised. However, as far as the organization is aware, as of August 2012, few, if any, prisoners had yet been released under this process.

Prisoners who are retained in the SHU will be eligible to participate in the SDP. The strategy document states that "offenders will normally begin the SDP in Step 1" (p. 27). However, the proposals appear to give some discretion to the prison authorities on what step to place a prisoner in the SDP.[126] Amnesty International wrote to CDCR in early July 2012 to seek clarification of how existing prisoners would be dealt with under the proposed reforms. Specifically, the organization sought clarification on whether prisoners who have already spent several years in SHU confinement without a serious disciplinary record will be eligible to move straight to steps 3 or 4 of the SDP, so that they can begin integrated activities right away, rather than spending a minimum of two more years in isolation and a third year in near-total isolation. Amnesty International also asked whether whether gang associates who no longer fit the SHU criteria will be considered for immediate transfer to the general prison population, and whether any such transfers have taken place. The organization regrets that it had not received a response to its inquiry at the time of writing.

16. CONCLUSIONS AND RECOMMENDATIONS

"Torture...to torture people. There are no rehabilitation programmes, no church, no education, no supplies for artists. They say we can't have cell mates because it would be too dangerous but that is not true. It's not true when they say that everyone held in the SHU is the 'worst of the worst'. Many of the inmates have been held in solitary confinement for more than 15 years, some for more than 20. Even for me after being in solitary confinement for almost seven years...that rush of loneliness still vibrates through me...so try to imagine effect on their minds"

Response from ex-prisoner who spent nearly seven years in Pelican Bay SHU, when asked what he thought was the objective for the practise of long-term isolation

In presenting the findings of this report, Amnesty International recognizes that the authorities have an obligation to ensure the safety of all inmates and that it may be necessary to segregate prisoners at times for disciplinary or security reasons. However, all measures must be consistent with states' obligation under international human rights law and standards to treat all prisoners humanely, and refrain from torture or other ill-treatment. As described above, Amnesty International considers that the conditions of isolation and other deprivations imposed on prisoners in California's SHU units breach international standards on humane treatment, and that prolonged or indefinite isolation, and the severe social and environmental deprivation existing in Pelican Bay SHU in particular, constitutes cruel, inhuman or degrading treatment or punishment in violation of international law.

In line with international human rights law and standards, Amnesty International urges that solitary confinement, whether for disciplinary or administrative purposes, is used only as a last resort, for the minimum period possible. All prisoners in segregated security housing should have access to adequate out of cell time and exercise, and (if held for other than brief periods in disciplinary segregation) access to meaningful rehabilitation programs both in terms of their right to humane treatment and to aid prisoners' eventual return to society. While the reforms currently under consideration contain some improvements to the present system, by for example, excluding prisoners from an automatic SHU assignment based solely on validation as an STG "associate", they do not go far enough. There are continuing concerns about both the fairness of the procedures for assigning prisoners to what could still be indefinite SHU terms, and about the length of time in which prisoners will remain in solitary confinement during the step down process.

In light of these concerns and the findings of its report, Amnesty International makes the following recommendations to the California authorities.

1. Recommendations for assignment to the SHU

- Ensure that only prisoners who are a severe, continuing threat, whose behaviour cannot be managed in a less restrictive setting, are held in the SHU.

- The criteria for SHU assignment for STG members should be based on concrete evidence of illegal, gang-related activity rather than membership or association alone, with prisoners given a fair opportunity to rebut the evidence used to validate such assignments.

- All prisoners assigned to the SHU as a "gang associate" or who have already spent years in indeterminate SHU assignments should be immediately removed from isolation. Prisoners should be transferred to the general prison population where possible, or to a transitional unit, depending on their individual circumstances.

- Placements in the SHU should be made only after an impartial hearing at which the prisoner has fair representation and a meaningful opportunity to contest the assignment and the right to appeal. The procedural protections should include those recommended in ABA standards, such as a reasonable opportunity for prisoners to present witnesses. Prisoners should be provided with regular, meaningful review of their SHU assignment through a similar impartial proceeding. Specific factual reasons should be provided for every decision to assign or retain someone in the SHU, with individualised guidance provided for what a prisoner needs to do to be released from the SHU.

2. Recommendations on conditions in SHU housing

- All prisoners in segregated housing should be held in humane conditions with adequate access to outdoor exercise and natural light and more out of cell time.

- If prisoners continue to be housed in Pelican Bay SHU, the conditions should be urgently modified to improve the living environment so that prisoners even in the most restrictive custody setting have better facilities for outdoor exercise, access to natural light and more human contact.

- Amnesty International recommends that CDCR introduce measures that allow some group interaction for prisoners at all stages of SHU confinement, both to benefit their mental health and wellbeing and to provide incentives and allow their behaviour to be measured. This could include allowing prisoners to exercise in small groups in a secure outdoor setting and/or have access to a day-room.

- The step down program should be modified to provide prisoners with an opportunity to work their way out of the SHU to the general population in months rather than the four years currently proposed.

- Opportunities should be provided for all prisoners in SHU housing to have access to meaningful programs, including educational, recreational and rehabilitation programs.

- Contact with family members should be encouraged, by providing adequate opportunities for visitation and by allowing all SHU prisoners to make regular phone calls to their families. Amnesty International recommends that prisoners who are disciplinary free be allowed two non-legal phone calls a month, as is permitted in high security units in the federal system. The authorities should extend the visiting hours for prisoners held in Pelican Bay SHU, given the remote location of this facility. The authorities should also consider transferring prisoners who have spent several years in Pelican Bay SHU to prisons nearer to home.

- Ensure adequate mental health monitoring of all SHU prisoners, including opportunities for prisoners to consult with mental health care professionals in private. Prisoners suffering from mental health problems should not be confined to cells for prolonged periods but should receive treatment in a therapeutic setting.

- All SHU prisoners should have access to adequate health care; given the isolated environment, there should be systems to ensure regular, independent review of health care provision in SHU facilities.

- Prisoners who have developed serious health care problems as a result of their SHU confinement (whether physical or mental) should be removed to an appropriate facility where their health care needs can be met.

- The use of Lexan (plastic) covered cells should be discontinued, or used only as a short-term emergency measure, given that they serve to further isolate prisoners already confined to cells and may worsen conditions inside the cell. Prisoners who engage in disturbed behaviour, such as spitting or throwing bodily waste, should receive treatment for their behaviour in a more therapeutic setting.

- Female SHU prisoners should at all times be attended and supervised by female staff and at no time should any areas of the SHU be attended by male staff alone. Male staff should be not be required or permitted to carry out duties or enter locations in the SHU where they can observe women in the shower or at other times when they are undressed.

3. Conditions in administrative segregation units (ASUs)

- Given the severe effects of isolation in ASUs as well as SHUs, and statistics showing a higher risk of suicide among inmates in ASUs than the prison general population, conditions in ASU's should be improved and all prisoners subjected to regular, careful monitoring of their mental health. Prisoners showing signs of mental illness or psychological distress while in segregation units should be immediately removed from extreme isolation. All prisoners held in ASU cells for longer than a few days should have access to occupational materials and contact with the outside world through TV and/or radio to reduce the effects of extreme isolation and sensory deprivation.

- The state Legislature and Governor should ensure that all prisoners, including those in the SHU, have access to effective rehabilitation programs and that such programs are adequately funded.

- The state Legislature should ensure through regular monitoring and oversight that all prisoners in the state correctional system are held in conditions that conform to international standards.

ENDNOTES

[1] The organization spent a day in each prison and spoke to staff and prisoners, interviewing 11 prisoners. Although the prison authorities selected the prisoners who agreed to be interviewed, and the interviews took place in the presence of prison staff, they included prisoners who had spent many years in the SHU and prisoners undergoing debriefing as well as those who had declined to debrief, as requested by Amnesty International. The delegates also spoke randomly to prisoners at the cell doors as it toured units in the SHUs at Corcoran and Pelican Bay. Amnesty International's delegates were Roy King, Emeritus Professor of Criminology and Criminal Justice, University of Wales and Honorary Senior Research Fellow, Institute of Criminology, University of Cambridge and Angela Wright and Tessa Murphy of the International Secretariat of Amnesty International in London, UK.

[2] "*Parole, Snitch, or Die: California's Supermax Prisons & Prisoners, 1987-2007,* by Keramet Reiter, Institution for the Study of Social Change, UC Berkeley, 7 July 2010. CDCR statistics on the racial makeup of the institutional population in 2007 were 39.8% Hispanic, 28.9% Black and 25.8% White. CDCR uses "Hispanic" as a race category although the US Census uses "Hispanic" as an ethnicity category.

[3] In California, as in other states, gangs, including prison gangs, are largely divided along racial/ethnic lines. The prison gangs considered to be the most serious, according to CDCR's threat criteria, are the Mexican Mafia, Nuestra Familia and the Texas Syndicate (of Hispanic or Mexican American or Latino immigrant origin), Northern Structure (associated with Nuestra Familia but with a mixed racial make-up); the Aryan Brotherhood and its affiliate the Nazi Low Riders (white supremacists), and the Black Guerilla Family.

[4] No exact figures are available as national studies have found it difficult to compare numbers across states due to different definitions by states of what constitutes "supermax" housing and with shifting practices due to court decisions. However, a survey by the Urban Institute found that, as of 2004, 44 states had "supermax" facilities housing some 25,000 inmates (*A Critical Look at Supermax Prisons*, Daniel P. Mears, Corrections Compendium, 2005). A census of state and federal prisons in 2005 conducted by the US Department of Justice's Bureau of Justice Statistics found there were 81,622 prisoners held in some form of "restricted housing" at that time.

[5] In the 19th century prisoners were often held in total isolation as a form of penitence, but the practice was abandoned after concern at the inhumane effects of such treatment. The first modern supermax prison was the federal prison at Marion, Illinois, where prisoners were placed in "lockdown" and confined to cells following the murder of two prison guards in 1983; the prison continued to hold prisoners in 23 hour cellular confinement for the next 23 years but is no longer an isolation facility. It has been replaced in the federal system by the federal prison ADX in Florence, Colorado, where some 500 prisoners are held in long-term isolation.

[6] See King, Roy D. The rise and rise of supermax: an American solution in search of a problem, *Punishment and Society, 1 (2) 163-186, 1999.* King's research found that California had 2,942 beds out of a total of 19,630 in 34 states in the mid 1990s.

[7] These included California's "three strikes law" which triggers a sentence of 25 years to life for any offender with two prior felony convictions, including for non-violent offences.

[8] The Determinate Sentencing Act, 1976.

[9] One of the first was the Special Management Unit (SMU) in Arizona, which opened in 1987 and on which Pelican Bay was modelled (see *Cruel Isolation, Amnesty International's concerns about conditions in Arizona Maximum Security Prisons*, AI Index: AMR 51/023/2012.)

[10] A 1999 National Institute of Corrections report evaluating of the effects of supermax in reducing violence found "There exists little or no hard data comparing such perceived impacts on entire systems versus the fiscal cost to gain such results" (Chase Riveland, *Supermax Prisons: Overview and General Considerations*, p. 2.) A later study of corrections systems in Arizona, Illinois and Minnesota found no evidence that segregating prisoners reduced overall levels of inmate on inmate violence and had mixed results on whether supermax confinement increased staff safety (Chad S. Briggs et al, "The Effects of Supermax Security Prisons on Aggregate Levels of Institutional Violence", Criminology 41 (2003), 1341-76.)

[11] Reiter Keramet, *Parole, Snitch or Die*, *supra* at note 2, p. 43.

[12] They include Mississippi, where incidents of violence and use of force dropped by 70% after the state cut its supermax population of more than 1,000 prisoners and introduced group activities and programs for the remaining inmates, leading senior corrections officials to support eventual closure of the unit in 2010. Ohio reduced its supermax population by 89% with no increase in violence.

[13] The decision followed extensive litigation on the state's failure to provide adequate medical and mental health care brought in two lawsuits, *Coleman v Brown*, filed in 1990, and *Plata v Brown*, filed in 2001.

[14] AP, Don Thompson, 14 June 2012.

[15] Although California ranks 18th in the USA in the rate at which it incarcerates its population, it still incarcerates at a rate higher than most other countries. The current incarceration rate of sentenced prisoners in California state prisons is 595 per 100,000 population (*Public Policy Institute of California, April 2012)*. By comparison, the incarceration rate in 2008 (including pre-sentenced inmates) in England and Wales was around 153/100,000, France, 96/100,000 and Germany 89/100,000), *World Prison List, International Centre for Prison Studies, Kings College, London, UK*. In England and Wales, with a population of 56 million, compared to California's 38 million, the current prison population is 82,000 prisoners, the highest per capita in Western Europe.

[16] *The 2012-13 Budget, Refocusing CDCR After the 2011 Realignment*, LAO report, 23 February 2012.

[17] The concern generated by the hunger strike led to a hearing on solitary confinement by the Public Safety Committee of the California State Assembly on 23 August 2012 (organized by the chair of the Public Safety Committee Tom Ammiano), at which prisoners' relatives, former SHU prisoners, advocates, penal reformers, representatives of religious organizations and CDCR testified.

[18] See public statement 4 October 2011: *Amnesty International Calls for Urgent Reforms to California security housing units as the prison hunger strike resumes* http://www.amnesty.org/en/library/asset/AMR51/085/2011/en/

[19] Human Rights Committee General Comment 21; similar principles are affirmed under the UN Standard Minimum Rules (Article 57) and the Basic Principles for the Treatment of Prisoners (Principle 5).

[20] Interim Report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268/, para 46 (herafter referred to as the "*Interim Report* of the SR).

[21] Human Rights Committee General Comment 20 on Article 7 of the ICCPR.

[22] Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee 2006, para 36 (CCPR/C/SR.2395, 27 July 2006).

[23] *Ibid*, para 32.

[24] Conclusions and recommendations of the Committee against Torture on the second report of the USA, para 36, CAT/C/USA/CO/2, 18 May 2006.

[25] The European Prison Rules were adopted by the Committee of Ministers of the Council of Europe in January 2006, and approved by all 47 member states of the Council of Europe for guidance in legislation, policies and practice of the countries concerned.

[26] The case law looks at the individual circumstances of each case and cases may not be totally analagous in every respect to cases elsewhere; however, for example, in Ramirez Sanchez v France, Application No. 59450/00, the European Court of Human Rights found that solitary confinement, even if only partial, cannot be imposed on a prisoner indefinitely. The Inter-American Court of Human Rights has held that prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, and that isolation in a small cell without ventilation or natural light together with restriction of visiting rights constitutes a form of cruel, inhuman and degrading treatment (Loayza-Tamayo v Peru, IACHR, Series C, No.33, para 58 (1997).

[27] *Interim Report* of the SR, *supra* at note 21.

[28] *Madrid v Gomez*, 889 F. Supp.1146 (N.D. Cal 1995)

[29] *Madrid v Gomez, at p. 59*

[30] Prisoners must establish they are deprived the minimal civilized measure of life's necessities", (*Wilson v Seiter,* 501 U.S. at 298 (1991). In order to establish that a deprivation violates the Eighth Amendment, a claim must not only satisfy the objective test of a sufficiently serious deprivation, but also a subjective test in which it must be shown that the authorities were aware of, and showed "deliberately indifference" to the risk of harm posed by the conditions (*Wilson v Seiter*, at 303); the prison authorities must "know of and disregard an excessive risk to inmate health and safety (*Farmer v Brennan*, 511 U.S. at 837 (1994);

[31] e.g. *Farmer v Brennan*, 511 U.S. at 825,831

[32] A further obstacle to prisoners bringing claims on grounds of mental injury is the Prison Litigation Reform Act (PLRA) passed by Congress in 1995 which provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. section 1997 e (e).

[33] Initial report of the USA to the Human Rights Committee, 24/08/94. CCPR/C/81/Add.4., paras 176 and 177.

[34] Under treaty-based and customary rules of international treaty law, states may not enter reservations which are incompatible with the object and purpose of a treaty (Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 23 May 1980).

[35] The Human Rights Committee has stated it is "particularly concerned at reservations to article 6, paragraph 5, and article 7 of the Covenant, which it believes to be incompatible with the object and purpose of the Covenant" (Concluding Observations of the Human Rights Committee: United States of America, U.N.Doc. CCPR/C/79/Add.50, A/50/40 (1995, para 279). The CAT has expressed concern about "The reservation lodged to article 16, in violation of the Convention, the effect of which is to limit the application of the Convention", Conclusions and Recommendations of the Committee against Torture: United States of America, 15,05,2000. (A/55/44, para179 (b)).

[36] *Confronting Confinement*, report of the Commission on Safety and Abuse in America's Prisons, June 2006. The Commission was established by the Vera Institute of Justice in 2005 and conducted a year-long inquiry which included public hearings in four major cities. It was co-chaired by former US Attorney General Nicholas B. Katzenbach and the Hon John Gibbons, former Chief Judge of the US Court of Appeal for the Third Circuit. Its 20 members included prison administrators, prisoner-rights advocates, religious representatives and members of both main political parties. http://www.vera.org/content/confronting-confinement

[37] *Confronting Confinement*, pages 53-61

[38] *Ibid*, at p. 57

[39] ABA Criminal Justice Standards on Treatment of Prisoners, approved by the ABA House of Delegates, February 2010. ABA standards are not binding but are "grounded in legal and constitutional principles" and have "guided the development of law and practice in the American criminal justice system" (Statement submitted to Hearing before Senate Judiciary Committee, 19 June 2012).

[40] Arizona SMU, which opened in 1986, was the first "purpose-built" "supermax" facility in the USA.

[41] *Amnesty International, Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary*, Roy King, (AI Index: AMR 51/35/94), May 1994 p. 16; *Cruel Isolation, Amnesty International's Concerns about Conditions in Arizona Maximum Security Prisons* (AI Index AMR 51/023/2012), April 2012, p 4.

[42] CDCR Operations Manual states that all wardens in the division of adult facilities "shall have systems in place to ensure that ACA standards have been reviewed and, where appropriate, incorporated into local operations" (Operations Manual Article 26, 14090.4). CDCR has also reported that it is working towards seeking ACA accreditation in designated California facilities (CDCR Division of Adult Institutions Strategic Initiatives 2011-2012; the designated facilities were not named in this document).

[43] Amnesty International has described how holding two prisoners for 22 or more hours a day in a small cell in enclosed, isolated environment can cause particular stresses on prisoners and that inappropriate double-celling can be dangerous, leading to attacks by inmates on cell-mates (*USA: Conditions for death row prisons in H-Unit, Oklahoma State Penitentiary*, 1994 (AMR 51/34/94). The Madrid v Gomez ruling also noted with concern lack of clear criteria for double-celling inmates in Pelican Bay SHU and cases where prisoners had been victims of in-cell assaults by their cell-mate, Madrid ruling , 43-44: two-thirds of the SHU population were double-celled at that time.

[44] *Madrid v Gomez,* 889 F. Supp. 1146, p. 38

[45] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[46] *Interim Report* of the SR, *supra* at note 21, p. 14

[47] Standards for Adult Correctional Facilities, 4th Edition (4-4147-148, 4-4140). The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell; as Amnesty International has noted elsewhere, this standard may have been acceptable for old-style facilities with open barred-cells but is not in the organization's view an adequate standard for a modern facility, particularly with solid cell doors.

[48] A letter to the Office of the Receiver (appointed by a federal court to supervise medical care in California prisons) from Carol Strickman, staff attorney at Legal Services for Prisoners with Children, dated 2 September 2011, outlining a range of concerns about the health of SHU prisoners, states that the ventilation system at Pelican Bay is inadequate, with recycled air entering the cells "full of dust and other particles, causing complainants to suffer respiratory complications in their breathing".

[49] Terry A. Kupers, M.D. M.S.P, a clinical psychiatrist with expertise in mental health issues relating to prisoners, testified in an Arizona case that Lexan made the cell "significantly hotter and more humid than it would otherwise be", and that it also "greatly intensifies the isolation". He spent several minutes inside an empty Lexan cell and noted that "While one can hear a person speaking through the lexan, the voice is more muffled than when one speaks through the grid without a lexan cover." (extract from testimony of Kupers in the case of Arizona death row inmate Robert Comer, 2002). Similar testimony has been given in a case in Mississippi.

[50] Amnesty International correspondence with clinical psychiatrist Terry Kupers (see note 47 *supra*). Kupers, explained how such behaviour can result from mounting anger in reaction to the harsh isolative conditions in such units, with fewer appropriate means for the prisoner to express him or herself ; see also Kupers, Terry A, *How to Create Madness in Prison,* David Jones, Ed; Humane Prisons. Oxford: Radcliffe Publishing, 2006.

[51] Reiter, Keramet, *Parole, Snitch or Die*, *supra* at note 2, p. 22.

[52] CDCR Security Threat Group Prevention, Identification and Management Strategy, page 33.

[53] *Madrid v Gomez*, p. 38

[54] Undated memorandum regarding Security Housing Unit Concerns issued by CDCR in mid-2011 to the wardens of Corcoran, Pelican Bay and other state prisons.

[55] One example criticized by Amnesty International for failing to ensure humane conditions is H-Unit in Oklahoma State Penitentiary, an isolation unit which was planned and designed by an informal committee of Department of Corrections personnel as a "non-contact" facility (*Amnesty International, Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary, USA,* by Professor Roy King, AI Index: AMR 51/35/94).

[56] *Parole, Snitch and Die*, *supra* at note 2, p. 16

[57] Principles 19 and 20 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly, Res. 43/173, 9 December 1988.

[58] According to a class action lawsuit filed in May 2012 on behalf of prisoners in Pelican Bay SHU, while prisoners who can afford them are allowed to take correspondence courses, "there has been no consistent access to proctors for exams that would allow prisoners to get credit for their coursework" (*Ruiz v Brown*, Case No: 4:-cv-05796-CW, Plaintiffs' Second Amended Complaint, at page 14)

[59] Human Rights Committee General Comment 21, 1992

[60] Findings of studies published in numerous articles, (e.g. Grassian, "Psychiatric Effects of Solitary Confinement" Wash U. J.L and Policy (2006)) and in court rulings and testimony. See generally Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime and Just. 441 (2006).

[61] *Madrid v Gomez*, p. 60

[62] Madrid v Gomez, pages 39-42. Dr Stuart Grassian is a Board Certified psychiatrist on the faculty of Harvard

Medical School. His reports, based on studies of solitary confinement, include Grassian. S., *Psychopathological Effects of Solitary Confinement*, American Journal of Psychiatry, 140, 1450-1454 (1983) and *Psychiatric Effects of Solitary Confinement*, 22 Wash U. Journal of Law and Policy, Vol: 22:325 (2006).

[63] Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, Crime & Delinquency, 49, 124-156 (2003), and in Statement to the California Assembly Committee on Public Safety, Hearing on SHU Conditions in California Department of Corrections and Rehabilitation, 23 August 2011.

[64] A class action lawsuit filed in May 2012 on behalf of prisoners who had spent between 11 and 22 years in Pelican Bay SHU (*Ruiz v Brown*, Case No. 4:09-cv-05796-CW. Plaintiffs' Second Amended Complaint). The complaint describes *inter alia* the ongoing physical and mental effects of prisoners' prolonged isolation, including severe anxiety, headaches, chronic fatigue, insomnia, panic attacks, hallucinations, concentration and memory loss, numbness, pages 27-30.

[65] *Ruiz v Brown*, pages 28-30.

[66] Statement to the California Assembly, *supra* at note 65.

[67] Letter from Carol Strickman, staff attorney at Legal Services for Prisoners with Children, to the Office of the Receiver, 2 September 2011. The Receiver is a medical officer appointed by a federal court in 2005 to oversee reform of health care provision in California prisons, under litigation charging that the state had failed to provide adequate health care to inmates (*Plata v Brown*).

[68] *Wilkerson et al v Stalder et al*, Civil Action No 00-303, US District Court, M.D. La, Report and Recommendations of Magistrate Judge Dalby, 11 August 2007.

[69] 1997 report by three independent psychiatrists who examined prisoners held in Special Security Units. An official inquiry by the UK prison service recommended that prisoners held in the unit should be retained there for as short a period as possible and more provision should be made for mental stimulation and physical exercise and prisoners should have open visits with members of their immediate family. The findings are described in Amnesty International report, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment,* 1997 (AI Index: EUR 45/06/97)

[70] E.g. White T. Schimmel D, Frickey R: A comprehensive analysis of suicide in federal prisons: a fifteen year review. Correctional Health Care 9:321-23, 2002; *Confronting Confinement,* the 2006 report of the Commission on Safety and Abuse in America's Prisons *(*op cit at note [ADD] cites a national study finding two-thirds of suicides in US jails took place in a control unit (Hayes and Rowan, 1988). Data from various US states in recent years, including Oregon and Ohio, have shown suicide rates occurred disproportionately in segregation units.

[71] The California prison suicide rate for 2005-2010 averaged 21.7 per 100,000 prison population compared to the national average in US state prisons for 2005-2007 of 16.6/100,000 (latest figures provided by the US Department of Justice's Bureau of Justice Statistics.

[72] Source: annual reports prepared by Dr Raymond F. Patterson, M.D., expert adviser to the Special Master, and reports of the Special Master to the US District Court for the Eastern District of California. The reports were submitted as part of the Special Master's continuing review of CDCR's compliance with court-ordered remedies in the *Coleman v Brown*, lawsuit, case No. CIV S-90-0520 LKK JKM P (E.D. Cal.). The annual suicide numbers were 43 (2006); 34 (2007); 37 (2008); 25 (2009), 35 (2010).

[73] In 2007, following concern by the Special Master about the rising number of suicides in administrative segregation units, CDCR instructed all institutions to assess their logistical abilities to provide in-cell radios and TVs to inmates in such units for non-disciplinary reasons. Some have since been converted to allow such equipment in order to reduce extreme conditions of isolation. However, during Amnesty International's visit to Pelican Bay in November 2011, it noted that a "stand-alone" ASU facility in Pelican Bay, which was built just a few years ago, still had no outlets for radio or TV.

[74] Letter to Amnesty International from CDCR, 27 March 2012.

[75] Reports to the Special Master on suicides in CDCR facilities by Dr Raymond F. Patterson, M.D, for Calendar Years 2006, 2007, 2008/9 (combined report) and 2010.

[76] Special Master's Report, filed 9 November 2011, Coleman v Brown (see note 68, supra).

[77] *Parole, Snitch or Die*, *supra* at note 2, at p. 49-50.

[78] *2011 Adult Institutions Outcome Evaluation Report*. The study found that prisoners who had spent some time in the SHU during their incarceration and were released on parole during Financial Year 2006/7 had a 5% higher recidivism rate (measured by returns to prison) than other inmates released during the same period. This was aggregate data and did not include a breakdown of the percentage released directly to the street from the SHU or other factors. However, adding SHU releases to the populations of offenders in CDCR analysis for lawmakers and other decision-makers is a welcome development.

[79] Standards on medical services are contained under 22-23 of the SMR. The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment also provide that medical care and treatment "shall be provided whenever necessary" and that "This care and treatment shall be provided free of charge". (Principle 24).

[80] A Receiver is an impartial agent appointed by a court for a period of time to take control of assets which are the subject of litigation, and to report to the court. The Receiver appointed pursuant to the *Plata v Brown* litigation is responsible for delivering health care in all 33 adult correctional institutions and to bring the level of medical care to a standard which no longer violates the US Constitution, after which the court will return control of prison medical care to the State.

[81] From report of the California Legislative Analyst's Office (LAO), *Providing Constitutional and Cost-Effective Inmate Medical Care*, April 2012. Under US law, prison officials must provide adequate care for prisoners' "serious medical needs" and deliberate failure to do so ("deliberate indifference") violates the prohibition of cruel and unusual punishment under the Eighth Amendment to the US Constitution.

[82] *Ruiz v Brown*, *supra*, note 66, p. 16

[83] *Ibid*, pages 16,17.

[84] LAO report, April 2012, see note 87, above, p. 15

[85] *Ibid*, page 21.

[86] Prisoners with serious mental illness can be held in other SHU facilities and treated under the Correctional Clinical Case Management System or, if more intervention is required, referred to a prison Enhanced Outpatient Program or another mental health facility.

[87] Mental Health Services Delivery System, Chapter 9: Psychiatric Services Unit, 2009 Revision.

[88] 2008 NCCHC Standard for Health Services for Jails and Prisons. Standard E-09 (prison:essential).

[89] CDCR Strategic Plan 2010-2015.

[90] *Ruiz v Brown*, *supra* at note 66, p 17

[91] *Ibid*

[92] Mental Health Services Delivery System, Chapter 8, Security Housing Unit, 12-8-13, 2009 Revision.

[93] Prisoners may be assigned to ASUs for various reasons, including for disciplinary offences or pending investigations, for their own protection, or while waiting a placement in the SHU. In general prisoners spend less time in ASU than in the SHU, although in some cases they can be held there for months, or even longer.

[94] Based on figures provided to Amnesty International by CDCR in July 2012

[95] http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf

[96] *USA: The Findings of a Visit to Valley State Prison for Women, California,* AI Index: AMR 51/053/1999 http://www.amnesty.org/en/library/info/AMR51/053/1999

[97]See, for example, *Women in Custody*, http://www.amnestyusa.org/pdf/custodyissues.pdf

[98] One listed offence is "throwing a caustic substance on a non-inmate", meriting a SHU term of two to six months or even longer if a more serious charge results. Sexual offences such as "indecent exposure", also listed as an offence carrying a SHU term of three to nine months, may also be indicative of mental health problems.

[99] Under California regulations an inmate will be assigned an employee to assist in the investigation when required due to the complexity or seriousness of the case or where it is unlikely the charged inmate can collect

and present the necessary evidence due to restricted housing circumstances or where determined to be necessary for a fair hearing. Prisoners are not entitled to legal representation at internal disciplinary hearings but may be assigned a staff assistant at the hearing. A finding of guilt in a disciplinary hearing is based on the preponderance of the evidence rather than beyond all doubt as required in a court of law.

[100] The ICC consists of prison staff members, chaired by the Warden or Deputy Warden or designee and is an administrative procedure, not a disciplinary hearing.

[101] An inmate may be retained in the SHU after serving a fixed term if his or her release would "severely endanger the lives or inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct" (Title 15, Section 3341.5, 8B).

[102] This was the figure of gang-related SHU inmates given to Amnesty International during a meeting with CDCR in November 2011 (the largest number housed in Pelican Bay, others in Corcoran, Tehachapi and a small unit in California State Prison, Sacramento.

[103] *Interim report* of the SR, *supra* at note 21, paras 89, 94-98.

[104] Under the Prison Litigation Reform Act of 1995, prisoners must first exhaust administrative remedies before bringing federal civil rights claims before the courts and the process can be protracted. In practice, individual claims against prisoners' security classifications or prison housing assignments, whether in the state or federal courts, are rarely successful. As noted under Section 4 of this report, the US courts have taken a restrictive view of what constitutes "cruel and unusual punishment" in terms of prison conditions and prisoners have to prove they are deprived of basic essentials of life, with knowledge and deliberate indifference by prison officials to a substantial risk of harm, a high barrier to surmount.

[105] Testimony to California Assembly's Public Safety Committee hearing on 23 August 2011.

[106] Some prisoners have spent longer in solitary confinement as they were placed in SHU housing before Pelican Bay opened; a class action lawsuit filed by the Centre for Constitutional Rights and others in May 2012 cites the case of one prisoner who had been in solitary confinement since 1984:28 years, and others who had spent 27 and 26 years in solitary, all based on alleged gang associations (*Ruiz v Brown*, supra at note 66, p.9).

[107] Charles Carbone, an attorney specialising in prisoner rights, in his testimony to a California Assembly hearing on SHU confinement in August 2011, reported that there were hundreds of prisoners in the SHU based on evidence that is "completely and utterly confidential" (from transcript of hearing on 23 August 2011). According to the *Ruiz v Brown* lawsuit CDCR continue to rely on "laundry lists" and on informants who identify no specific gang activity to retain prisoners in the SHU under the six-year inactive review, despite an agreement under the settlement of a 2004 lawsuit (*Castillo v Almeida*) that a confidential source must identify specific gang activity or conduct before such information can be considered as a source item (*Ruiz v Brown*, at pages 25, 26).

[108] *Griffen v Gomez*, Case No. C 98-21038 JW.

[109] The courts have ruled that prisoners have a protected liberty interest in avoiding being held in conditions which constitute an "atypical and significant hardship" in relation to the "ordinary incidents" of prison life (Sander v O'Connor), and thus are entitled to due process protections under the Fifth and Fourteenth Amendments of the US Constitution in decisions to place or retain them in such conditions. The courts have held that indefinite confinement to a supermax facility constitutes an "atypical" hardship under this standard.

[110] In its key ruling in *Wilkinson v Austin*, 545, U.S. 2009 (2005) (No.04-495), the US Supreme Court held that indefinite confinement in Ohio State Penitentiary (OSP), the state's supermax facility, constituted "an atypical hardship" and inmates were thus entitled to some due process protection in decisions to transfer them to, and retain them in, the facility. The court held that Ohio's informal, non-adversarial procedures for placement in the facility were adequate to safeguard the due process requirement under the Constitution. The ruling did not prescribe the procedures all states must used in assigning inmates to supermax facilities but indicated the minimal standard adequate to meet the due process requirement in such cases.

[111] Hewitt v Helms, 459 U.S. 460, 477 n.9 (1983)

[112] For example, in *Wilkinson v Austin*, (*supra* at note 119) the Supreme Court upheld procedures that provide for a review of supermax placement after 30 days and thereafter annually; there was no need under Ohio's procedures to provide a detailed statement of the reasons for the assignment or any clear notice of what conduct is necessary for a prisoner to be removed from isolation. In some systems, including the federal system,

the initial reasons for placement may be grounds for continuing segregation and this has been upheld by the courts.

[113] See, for example, testimony to the California Assembly's Public Safety Committee hearing on 23 August 2011, including testimony of Charles Carbone, an attorney specialising in prisoner rights. During a meeting with CDCR at its headquarters in November 2011, Amnesty International's delegates were informed that the OCS had rejected only two of the IGI validation recommendations in the past 18 months, although no official statistics were available.

[114] However, unlike a hearing on a serious disciplinary charge, the indeterminate SHU review hearings do not provide the prisoner with the right to a staff employee to assist in the investigation of any challenge to the assignment the inmate may wish to put forward, nor does the prisoner have the right to call any witnesses (see Prison Law Office, Gang Validation and Debriefing, July 2012).

[115] *Ruiz v Brown*, *supra* at note 66,, at p. 20. As the lawsuit also states, the only review at which the classification committee will review whether the prisoner should be released from the SHU occurs once every six years, at the six year "inactive" review.

[116] The Complaint in *Ruiz v Brown* alleges that "an unwritten policy prevents any prisoner held in the SHU from being granted parole", citing the cases of four prisoners serving indeterminate SHU terms who are eligible for parole "but have been informed by the parole boards that they will never attain parole so long as they are housed in the SHU (*Ruiz v Brown*, p. 18).

[117] Letter to California state governor Jerry Brown, 2 July 2011, from Staughton and Alice Lynd, attorneys who represented the class of prisoners that were the subject of the lawsuit giving rise to the *Wilkinson v Austin* ruling.

[118] *STG Prevention, Identification and Management Strategy* document, 1 March 2012, at page 36 (hereafter referred to as *STG Management* document, 1 March 2012).

[119] A committee of prisoner and human rights advocates and others which was set up to mediate between prisoners and CDCR during the hunger strike and has continued with this role in relation to the proposed reforms.

[120] SNYs are protective custody units for prisoners who have dropped out of gangs and for other prisoners considered vulnerable, such as sex offenders.

[121] Security Threat Group Prevention, Identification and Management Strategy, p. 36

[122] The program consists of a four month initial review period after which the prisoner may enter the active phases of the program, with structured activities and possibly work in the unit (phase II, lasting a minimum of 90 days and phase III, lasting a minimum of 60 days).

[123] See Connecticut Department of Corrections website, report, Recidivism, 23 February 2012, stating that more than 5,000 prisoners have been involved in the gang management program, with a recidivism rate (return to gang activity) of approximately 8%. See also "Connecticut Program Turns Gang Members Around", www.corrections.com/news/article/11234, 2003.

[124] Emmitt Sparkman on reducing the use of segregation in prisons, posted on website of Vera Institute of Justice, 31 October 2011. Reforms to Unit 32 were initiated through lawsuits filed by the National Prison Project of the American Civil Liberties Union and eventually implemented in full collaboration with Mississippi's Department of Corrections Commissioner Christopher Epps and Deputy Commissioner Sparkman.

[125] Colorado Department of Corrections Administrative Segregation and Classification Review, prepared by James Austin, Ph.D. and Emmitt Sparkman, published by the National Institute of Corrections, Washington, DC, October 2011 (pages 5, 18, 19).

[126] The Security Threat Group strategy document, cited above states that "newly validated members" shall be placed in Step 1 of the SDP; for STG-1 Associates discovered to have been involved in serious disciplinary behaviour "Placement into a specific step of the SDP will be determined by ICC dependent upon the severity and recency of the behaviour" (p. 36). Elsewhere, the document states that, at the classification review hearing, consideration will be given to "initial placement in the appropriate step of the SDP" (p. 11).